MONTANA ADMINISTRATIVE REGISTER

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The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

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BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 12.6.2208 pertaining to the classification of caracal cat as a controlled species	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 1, 2022, at 9:30 a.m., the Fish and Wildlife Commission (commission) will hold a telephonic public hearing via the ZOOM meeting platform to consider the proposed amendment of the above-stated rule. There will be no in-person hearing. Interested parties may access the remote conferencing in the following way:

(a) Dial by telephone: 1 213 338 8477
Meeting ID: 832 6279 4945
Passcode: 525662

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Fish, Wildlife and Parks (FWP), no later than 5:00 p.m., on November 18, 2022, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-9785; or e-mail jesssnyder@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

12.6.2208 LIST OF CONTROLLED SPECIES (1) through (3) remain the same.

(4) The following mammals are classified as controlled species:

(a) Caracal cat – *Caracal caracal; and*

(a) remains the same but is renumbered (b).

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA
IMP: 87-5-705, 87-5-707, 87-5-709, 87-5-711, 87-5-712, MCA

REASON: On June 24, 2022, the commission published MAR Notice No. 12-560 at page 950 of the 2022 Montana Administrative Register pertaining to a proposed amendment listing caracal cat as a prohibited species. On November 4, 2022, the commission published a notice of decision on page 2189 of the 2022 Montana Administrative Register not adopting the proposed amendments due to the public comments received opposed to the proposal.

Instead of classifying the caracal as prohibited, the commission is proposing to classify caracal cat as a controlled species. Persons who wish to possess caracal cats will be subject to the permit requirements listed in ARM 12.6.2210.

4. Concerned persons may submit their data, views, or arguments orally at the telephonic hearing. Written data, views, or arguments may also be submitted to: Phil Kilbreath, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; or e-mail pkilbreath@mt.gov, and must be received no later than December 2, 2022.

5. Jessica Snyder or another hearing officer appointed by the department has been designated to preside over and conduct the hearing.

6. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to: Department of Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be emailed to jesssnyder@mt.gov.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. With regard to the requirements of 2-4-111, MCA, the commission has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Zach Zipfel
Zach Zipfel
Rule Reviewer

/s/ Lesley Robinson
Lesley Robinson
Chair
Fish and Wildlife Commission

Certified to the Secretary of State October 25, 2022.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through XCVII, and the repeal of ARM Title 37, chapter 95 pertaining to the licensure of day care facilities	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND REPEAL

TO: All Concerned Persons

1. On November 28, 2022, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed adoption and repeal of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/87930897755?pwd=U1JlaDhpbTFEbUNXZEFnMExCTk02UT09, meeting ID: 879 3089 7755, and password: 613397; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 879 3089 7755, and password: 613397. Find your local number: https://mt-gov.zoom.us/u/knLWqBiCE.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on November 14, 2022, to advise us of the nature of the accommodation that you need. Please contact Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I GENERAL DEFINITIONS (1) "Applicant" means an individual or legal entity who has made a formal request for a child care license or registration in the case of a relative care provider.

(2) "Capacity" means the maximum number of children a program is authorized by the department to have in care at any given time.

(3) "Child" is defined in 52-2-703, MCA, and means:

(a) a person under 13 years old; or

(b) a person with special needs, as defined by the department, who is under 18 years old or is 18 years old and a full-time student expected to complete an educational program by 19 years old.

(4) "Child care" has the same meaning as "day care," as defined in 52-2-703, MCA, and means licensed or registered child care for children provided by an adult, other than a parent of the children or other person living with the children as a

parent, on a regular basis, as applicable, for daily periods of less than 24 hours, whether that care is for daytime or nighttime hours. Child care may include out-of-school-time care for school-age children and drop-in child care, if these facilities opt to be licensed. The term does not include:

(a) informal short term, drop-in child care provided on an unscheduled or on-demand basis while parents attend discrete activities, unless the provider opts to be licensed;

(b) recreational, creative, educational, and religious programs and camps operating at specific and limited times of the year;

(c) programs established chiefly for educational purposes that limit their services to children who are four years old or older, unless the provider opts to be licensed;

(d) relative care, unless they are registered; or

(e) FFN care, unless they are registered.

(5) "Child care center" has the same meaning as "day-care center" as defined in 52-2-703, MCA, and means an out-of-home place in which child care is provided to 16 or more children on a regular basis. The term does not include a place where child care is provided if a parent of a child for whom child care is provided remains on the premises, unless the parent is a director/owner, staff member, support staff, or volunteer of the child care center, or unless the child care center is on the premises or campus of an employer who employs the parent.

(6) "Child care facility" has the same meaning as "day-care facility" as defined in 52-2-703, MCA.

(7) "Child Care Licensing (CCL)" is the program that regulates and supports child care programs at the Montana Department of Public Health and Human Services.

(8) "Child care program" includes all types of regulated child care, such as licensed child care centers, drop-in child care centers, group child care programs, family child care programs, out-of-school-time programs, and registered FFN providers. It does not include RCE providers.

(9) "Continuous" means without interruptions, gaps, or stopping.

(10) "Department" means the Montana Department of Public Health and Human Services.

(11) "Discrimination" means unjust or prejudicial treatment in child admissions or employment of staff on the basis of race, sex, religion, creed, color, national origin, marital status, age, or physical or mental disability. Any determination of discrimination will be made by the Montana Human Rights Bureau.

(12) "Drop-in child care program" means a child care program which only provides care to children on an unscheduled or on-demand basis while parents/guardians attend discrete activities.

(13) "Family child care facility," "family child care program," or "family day care home" is defined in 52-2-703, MCA, and means a private residence or other structure in which child care is provided to three to eight children on a regular basis.

(a) A family child care program may provide care for up to four children if exclusively caring for children under two years old.

(b) A family child care program caring for children of mixed ages may care for no more than three children under two years old.

(14) "Family, Friend, and Neighbor (FFN)" means a registered child care program that can provide care for no more than four children from separate families or all children from a "sibling group."

(15) "Group child care facility," "group child care program," or "group day-care home" is defined in 52-2-703, MCA, and means a private residence or other structure in which child care is provided to nine to 15 children on a regular basis.

(a) A group child care program may provide care for up to nine children if exclusively caring for children under two years old.

(b) A group child care program caring for children of mixed ages may care for no more than six children under two years old.

(16) "Group size" means the number of children in a defined space or intentionally grouped around an activity.

(17) "Harm to children" means harm to a child's health, safety, or welfare that falls within the definitions of child abuse or neglect as defined in 41-3-102, MCA.

(18) "Infant" means a child up to 12 months old.

(19) "Irregular" means periods of time less than six hours a day or for no more than three consecutive weeks.

(20) "Lapsed registration/license" means:

(a) an application for registration/licensing renewal which is received by the department after the registration/licensing expiration date;

(b) an application which is incomplete and results in a break-in-license span; or

(c) any break in the license/registration span resulting from a lapse of required insurance or resulting from a failure to comply with another licensure requirement.

(21) "License" is defined in 52-2-703, MCA, and is required for all child care program types that are identified in [NEW RULE II(2)]. A license is not required for RCE and FFN providers. License statuses include:

(a) "Probationary license" means a child care program license whose status has been reduced for a specified period of time based on a licensing violation and which will be reinstated to regular status upon successful completion of, and compliance with, remedial measures identified by the department to address specific deficiencies.

(b) "Provisional license" means a license status that is given to a child care program if the program does not meet all the requirements, but is attempting to comply. This status can be granted for a period of up to three months, and may be renewed. This license status is used for current licensees that are renewing and for new providers after their pre-licensing inspection.

(c) "Regular license" means a license status that is given upon determination that the child care program is meeting all requirements set forth for that specific type of licensed child care program.

(d) "Revocation" or "revoked license" means an enforcement action by the department to close a child care program and permanently remove the license.

(e) "Suspended license" means an enforcement action by the department to put a license on hold to protect the health, safety, or welfare of enrolled children or the public.

(22) "License exempt" means an RCE provider or FFN provider that opts to be registered.

(23) "Licensee," "owner," or "registered provider" means the legally responsible person or organization that holds a license or registration from the department.

(24) "Negative action" means denial, suspension, revocation, or modification of a license or registration.

(25) "Night care" or "non-traditional hours" means care provided for a child between the hours of 6 p.m. and 6 a.m.

(26) "Out-of-school-time program" means regularly scheduled care, licensed by the department for school-age children.

(27) "Overlap care" means care provided at a child care facility for children three years and older, and approved by the department for a designated time period not to exceed three hours when the number of children in care may exceed the number of children on the license.

(28) "Parent" or "guardian" means birth parent, custodial parent, adoptive parent, foster parent, legal guardian, or those authorized by the parent or entity legally responsible for the welfare of the child.

(29) "Pre-inspection" means a child care licensing inspection before a child care program begins providing care. The pre-inspection ensures the applicant has the required components in place to be a licensed child care facility.

(30) "Premises" means the private residence, facility, or other structure in which licensed child care will be provided and the associated approved outdoor space.

(31) "Provider" means the applicant, the license holder, or license exempt registration holder.

(32) "Registration" means department approval of a RCE provider or FFN provider who is license exempt.

(a) "Probationary registration" means a child care program registration whose status has been reduced for a specified period of time based on a registration violation and which will be reinstated to regular status upon successful completion of, and compliance with, remedial measures identified by the department to address specific deficiencies.

(b) "Regular registration" means a registration status that is given upon determination that the FFN or RCE provider is meeting all requirements set forth for that specific type of registered child care program.

(c) "Revocation" or "revoked registration" means an enforcement action by the department to close a child care program and permanently remove the registration.

(d) "Suspended registration" means an enforcement action by the department to put a registration on hold to protect the health, safety, or welfare of enrolled children or the public.

(33) "Regular basis" is defined in 52-2-703, MCA, and means providing child care to children of separate families for any daily periods of less than 24 hours and for three or more consecutive weeks.

(34) "Relative care" means the child is the brother, sister, nephew, niece, grandchild, or great grandchild of the persons providing child care and includes a child in a step, foster, or adoptive relationship.

(35) "Relative care exempt (RCE) provider" means a relative care provider who is registered by the department.

(36) "Renewal" is a process for providers to demonstrate ongoing compliance with licensing or registration requirements and the department to reissue a license or registration to continue operating a child care program.

(37) "School-age child" means a child who is five years old or older.

(38) "Sibling group" means all children are from the same household. For the purposes of FFN or RCE, this can also include first cousins and foster children who are not blood related.

(39) "Staff" refers to all persons who work or substitute in a child care program and count in child-to-staff ratio during hours when children are or may be present, excluding licensees.

(40) "Supervision" means the provider and/or such staff as are necessary to maintain required child-to-staff ratios must be able to see or hear the children at all times.

(41) "Technical assistance" means education, training, coaching, and other support provided by the department, its partners, or its contractors to child care programs and staff to assist in meeting licensing requirements and enhancing quality of care.

(42) "Toddler" means a child who is 12 months old to 36 months old.

(43) "Waiver" means the department has approved an exception to a rule within this chapter.

AUTH: 52-2-704, 53-4-212, MCA
IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-2-201, 53-4-211, 53-4-212, 53-4-611, MCA

NEW RULE II TYPES OF LICENSES AND REGISTRATION (1) Montana has different types of child care licenses, which vary by the number of children in care, the care settings or facility type, and sometimes the ages of children in care.

(a) Child care can be provided in child care centers, group child care programs, family child care programs, out-of-school-time programs, and drop-in child care programs. RCE and FFN providers can register as license exempt providers.

(b) Each rule in this child care licensing chapter describes the types of child care programs to which it applies.

(i) When the rule refers to "all licensed child care programs," that includes child care centers, group child care programs, family child care programs, out-of-school-time programs, and drop-in child care programs.

(ii) When the rule refers to "all child care programs," that means licensed child care programs and registered FFN providers.

(iii) RCEs are only included when specifically referenced in the rule.

(2) Child care centers, group child care programs, and family child care programs must be licensed.

(a) Drop-in child care programs and out-of-school-time programs have the option of being licensed.

(b) RCE and FFN providers have the option of being registered.

(3) Child care program types are determined based on the following criteria:

(a) RCE providers provide care in a private residence for either a sibling group of any size or no more than two children from separate households.

(b) FFN providers provide care in a private residence either for a sibling group of any size or for no more than four children from separate households.

(c) Family child care programs provide care in a private residence or other structure for three to eight children on a regular basis.

(d) Group child care programs provide care in a private residence or other structure for nine to 15 children on a regular basis.

(e) Child care center programs provide care in an out-of-home setting for 16 or more children on a regular basis.

(f) Out-of-school-time programs provide care on a regular basis only to school-age children.

(g) Drop-in child care programs provide care for children in an out-of-home setting on an unscheduled or on-demand basis while parents attend discrete activities.

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-724, 52-2-731, 52-2-732, 52-2-733, MCA

NEW RULE III COUNTING CHILDREN TO DETERMINE NEED FOR LICENSING AND CHILDREN UNDER CARE (1) Children of staff or owners who are present in the child care space during child care hours are included when counting children for license type and capacity. Children of staff or owners who attend school full time will not be included when counting children.

(2) The facility type is determined by:

(a) the provider's application;

(b) the license capacity for the program;

(c) the space designated for the facility;

(d) the number of staff members available to meet the child-to-staff ratio requirements; and

(e) whether any other safety, health, or program requirements are affected or violated.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-731, MCA

NEW RULE IV CHILD-TO-STAFF RATIOS, STAFF NUMBERS, AND SUPERVISION (1) A licensed or registered child care program may not provide care for more than the number of children permitted at any one time by its license or registration.

(2) Child care centers, licensed out-of-school-time programs, and licensed drop-in child care programs must meet the following requirements:

(a) The child-to-staff ratio and maximum group size are:

(i) 4:1 for children newborn through 23 months old with a maximum group size of 12;

(ii) 8:1 for children two years old through three years old with a maximum group size of 16;

(iii) 10:1 for children four years old with a maximum group size of 24; and

(iv) 20:1 for children five years old and over with a maximum group size of 40.

(b) There must be at least two staff members on the premises when there are more than 15 school-age children present.

(c) When children of different ages are mixed, the child-to-staff ratio and group size for the youngest child in the group must be maintained.

(d) Only the director, site directors, lead teachers, assistant teachers, trainees, and substitutes may be counted as staff when determining the child-to-staff ratio.

(e) Group sizes must be maintained except for mealtimes, outdoor play, rest periods, or during large group activities, such as educational assemblies.

(i) Out-of-school-time providers may exceed the group size limitation during transportation.

(3) Family and group child care programs must meet the following staffing requirements:

(a) Family and group child care programs serving mixed age groups may use an 8:1 child-to-staff ratio, with no more than three children under two years old.

(i) Any time there are more than three children under two years old in a program serving mixed age groups, there must be at least two staff members present with the group of children.

(ii) During approved overlap care times, family and group child care programs may use a 10:1 child-to-staff ratio.

(b) Family and group child care programs serving solely children under two years old must use a 4:1 child-to-staff ratio.

(c) There must be sufficient staff so that an adult is always present and supervising all children.

(4) Overlap care may be approved by the department for family child care and group child care providers in situations, such as before and after school, when the number of children in care over three years old exceeds the licensed capacity for a short period of time. Overlap care must meet the following requirements:

(a) overlap care for children under three years old is not permitted;

(b) overlap care must not exceed three hours total in any day;

(c) group child care programs may care for up to four additional children during the approved overlap time;

(d) family child care programs may care for up to two additional children during the approved overlap time;

(e) child care programs providing two shifts of 12-hour care may be granted three hours of overlap care for each 12 hours of continuous care; and

(f) programs wanting to provide overlap care must submit a written plan to CCL which includes the specific hours in which the overlap will occur and proof of insurance to care for the total number of children.

(i) A program must not provide overlap care until it has received written approval of this plan from CCL.

(5) Children must be supervised at all times.

(6) Staff providing direct care must be responsible for protection, supervision, and guidance of children through active involvement or direct observation.

AUTH: 52-2-704, 52-2-731, 52-2-735, MCA
IMP: 52-2-703, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 52-2-735, MCA

NEW RULE V LICENSE OR REGISTRATION APPLICATION (1) Any individual, agency, or group may apply for a license to operate a child care program, or apply for a registration to operate as a RCE or FFN license exempt provider. Applications may be obtained from the Department of Public Health and Human Services, Early Childhood and Family Support Division, Child Care Licensing Program, P.O. Box 4210, Helena, MT 59620-4210 or at https://dphhs.mt.gov/ecfsd/childcare/childcarelicensing.

(2) Applications for a license or registration by American Indians residing on American Indian reservations must follow the requirements of 52-2-722, MCA.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-722, 52-2-723, 52-2-731, MCA

NEW RULE VI LICENSE EXEMPT APPLICATION REQUIREMENTS

(1) RCE and FFN license exempt providers must meet the following requirements to be registered under this chapter:

(a) be 18 years old or older;

(b) limit the care they provide to a period of less than 24 consecutive hours;

(c) have satisfactory background check results for the applicant. If care is provided in the applicant's home, all adults who reside there must also have satisfactory background check results;

(d) complete orientation approved by the department that includes health and safety training; and

(e) complete a department-approved health and safety review course at least every three years.

(2) In addition to the requirements in (1), FFN providers must hold current certification for infant, child, and adult CPR, infant choking response, and pediatric first aid. CPR certification must be completed in a hands-on setting.

(3) For payment purposes, care can only be provided in the child's home, as defined in ARM 37.80.208.

AUTH: 52-2-704, MCA
IMP: 52-2-703, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, MCA

NEW RULE VII ISSUING A LICENSE (1) The department must conduct a pre-inspection with all applicants for a child care license before the applicant can care for children.

(2) The department will issue a 90-day provisional license following successful pre-inspection. The program can begin caring for children under the provisional license.

(3) The department will observe the program during the provisional license period while children are in care to assess compliance with requirements before removing the provisional status.

(4) The department will issue a regular license after the observation and any required compliance measures. The department issues regular licenses for a period of one year.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-732, 52-2-733, MCA

NEW RULE VIII RENEWING A LICENSE OR REGISTRATION (1) A child care program must submit an application for renewal at least 60 days prior to expiration of the license or registration.

(2) Provided a complete renewal application is filed timely, the expiring license or registration will remain in effect until the department makes a determination on the renewal application.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-722, 52-2-723, 52-2-731, MCA

NEW RULE IX LICENSE OR REGISTRATION APPLICATION DENIAL

(1) A child care license or registration application must be denied if:

(a) the application process has exceeded 90 days from the date the application is received because the applicant has not submitted all required materials to the department;

(b) the applicant discriminates in the provision of child care services on the basis of the race, sex, religion, creed, color, age, marital status, mental or physical disability, or national origin of the parent/guardian or the child; or

(c) background check results include offenses on the part of the applicant for which the application must be denied.

(2) An applicant for RCE or FFN license exempt registration must be denied if the parent/guardian and provider reside at the same residence, but the proposed care provider is not an approved relative care provider as defined in [NEW RULE I(34)].

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-731, MCA

NEW RULE X TECHNICAL ASSISTANCE (1) The department provides the following licensing and registration support:

(a) assistance to current and future providers to understand and meet licensing and registration requirements;

(b) consultation with child care providers in providing enrichment experiences for children, proper environment, and nutrition; and

(c) referral services and technical assistance to child care programs for staff training and development. Technical assistance may be concurrent with other department actions.

AUTH: 52-2-704, MCA
IMP: 52-2-731, 52-2-733, MCA

NEW RULE XI LICENSE OR REGISTRATION ASSIGNMENT (1) A license or registration is valid only for the licensee and premises for which it was issued. A license or registration may not be sold, assigned, or transferred.

(2) Separate licenses are required for child care programs maintained on separate premises, even when operated by the same provider.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-721, 52-2-723, 52-2-731, MCA

NEW RULE XII PROGRAM INSPECTIONS (1) The department may inspect the conditions and qualifications of any child care program or applicant during child care business hours.

(a) The department may conduct unannounced inspections of licensed child care programs and license applicants during child care business hours.

(b) The department must schedule FFN inspections.

(2) The department is responsible for inspecting child care facilities in addition to those inspections required by the local health authority and/or local or state fire marshal inspections.

(3) The department must visit and inspect all licensed child care programs as well as registered license exempt FFN programs annually.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 52-2-732, 52-2-733, MCA

NEW RULE XIII REQUIREMENTS FOR FACILITIES OPERATING WITH JOINT PROGRAMS (1) A child care program operating in connection with another activity unrelated to the child care program must meet the following requirements:

(a) have separate staff and separate space for each program. However, staff and space may be shared for janitorial, maintenance, cooking, or other support services;

(b) children attending the child care program must not come in contact with other persons unrelated to the child care program in the facility unless the provider can prove to the department's satisfaction that those persons will not pose any threat to the health, safety, and well-being of the children in child care; and

(c) if multiple programs, including multiple child care programs in the same building, increase the number of people regularly in the building to 16 or more children, all fire, safety, and sanitation requirements for child care programs with 16 or more children must be complied with by the child care program.

(2) Persons, corporations, or organizations may be licensed or registered for more than one child care facility.

(a) If the child care program is housed in a private single-family living structure, the department will issue only one registration or license for a child care program in the structure and premises.

(b) If more than one child care program exists in one retail or commercial structure, the department will grant individual licenses to each program.

(c) If the child care program is contained in a multi-family structure, such as an apartment building, the structure will be allowed to house multiple child care programs that meet the requirements of (1)(a) and (b) above.

(3) A provider may be licensed to provide care in a facility that is also licensed to offer foster or respite care services, or another licensed or certified human services program, if the part of the building with respect to which the provider is requesting a child care license is physically separated from the other building services.

(a) If the program is licensed or registered as a child care program and serves as a foster care home, the department's Child and Family Services (CFS) regional administrator and Early Childhood and Family Support Division (ECFSD) must both approve the dual license or registration.

AUTH: 52-2-704, MCA
IMP: 52-2-731, MCA

NEW RULE XIV WAIVERS AND PILOT PROJECTS (1) New and renewal license applications for child care programs may include written requests to waive any provision of a rule within the child care licensing chapter. The department and its partner agencies (e.g., local public health departments) may grant waivers if the department determines that the health and safety of the children in care are not diminished. The written request must:

(a) include the basis for request, such as significant hardship to program or facility;

(b) propose an alternative that is consistent with best practices in early childhood or school-age care; and

(c) demonstrate that the alternative will meet the intent of the rule.

(2) Proposals for innovative pilot projects will be considered by the department upon written request. The department may grant an extended provisional license for approved projects that meet all criteria for provisional license status. Projects must not be implemented without prior written approval from the department. The department reserves the right to revoke such extended provisional licenses.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-722, 52-2-723, 52-2-731, MCA

NEW RULE XV PROGRAMMING DEFINITIONS (1) "Guidance approach" means the use of direction to resolve mistaken behavior without punishment.

(2) "Positive child guidance" means age-appropriate, non-punitive methods used to redirect a child to achieve a desired behavior.

(3) "Programming" means the activities, schedules, and curriculum of a child care program.

(4) "Punishment" means any form of discipline that causes pain, discomfort, humiliation, shame, or fear, including name-calling, spanking, slapping, pinching, pulling, and hitting with an object.

(5) "Screen time" means time during which content on a mobile phone, tablet, computer, television, or other device can be viewed.

AUTH: 52-2-704, 53-4-212, MCA
IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-2-201, 53-4-211, 53-4-212, 53-4-611, MCA

NEW RULE XVI GENERAL PROGRAMMING REQUIREMENTS (1) Child care centers, group child care programs, family child care programs, and licensed drop-in child care programs must have a written plan of daily activities and routines that:

(a) is flexible to accommodate the ages and needs of individual children and the group. Both active and passive learning experiences must be provided under direct supervision;

(b) provides a diversity of experiences during the day for each child with opportunity for quiet and active experiences, and experience with different types of equipment, and materials;

(c) provides developmentally appropriate activities for the children which foster sound social, intellectual, emotional, and physical growth including:

(i) opportunities for individual and small group activities;

(ii) time and opportunity for creative experiences for children through art, music, books, and stories, and dramatic play;

(iii) outdoor play each day except when precluded by severity of weather; and

(iv) experiences for children to learn about the world in which they live including opportunities for field trips to places of interest in the community and/or presentations by family and other community people. Teachers are required to secure a release from parents/guardians before children are taken on field trips;

(d) maintains sufficient quantity and quality of materials and equipment to permit multiple use of the same item by several children;

(e) provides play equipment and materials that include items from each of the following six categories:

(i) dramatic role playing;

(ii) cognitive development;

(iii) visual development;

(iv) auditory development;

(v) tactile development; and

(vi) large-muscle development;

(f) provides furniture that is durable, safe, clean, and child-sized or appropriately adapted for children's use;

(g) provides storage shelves for children at their own level;

(h) limits screen time to an amount of time and type of content that is age appropriate for the children receiving care; and

(i) provides for communications with families about children's program activities.

(2) Out-of-school-time programs must provide:

(a) a sufficient quantity and variety of age-appropriate arts and crafts supplies, construction materials, music and sound devices, table games, books, and gross motor materials such as balls and jump ropes;

(b) materials that:

(i) promote imagination and creativity;

(ii) promote communication and literacy skills;

(iii) encourage social skill development;

(iv) promote numeracy, math, and spatial ability;

(v) encourage discovery, exploration, and reasoning; and

(vi) promote learning skills.

(3) Child care centers, group child care programs, family child care programs, and licensed drop-in child care programs offering night care must meet the following criteria in addition to compliance with other requirements:

(a) develop plans for program, staff, equipment, and space which will provide for the personal safety and emotional and physical care of children away from their families at night; and

(b) special attention is given by the staff to provide for a transition into this type of care appropriate to the child's emotional needs.

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, 52-2-722, 52-2-723, 52-2-724, 52-2-731, 53-4-504, 53-4-508, MCA

NEW RULE XVII INFANT AND TODDLER ACTIVITY REQUIREMENTS

(1) Child care centers, group child care programs, family child care programs, and licensed drop-in child care programs that provide care for children under 36 months old must have a written plan of daily activities and routines that ensures:

(a) a child who is awake must not spend more than 30 minutes of consecutive time confined in a crib, playpen, jump chair, highchair, or other apparatus;

(b) each child has individual personal contact and attention by the same adult on a regular daily basis at least once each hour during nonsleeping hours;

(c) children are taken outside for some period during each day in good weather; and

(d) each infant can maintain the infant's own pattern of sleeping and waking periods according to instructions from the parents/guardians.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-731, 52-2-736, MCA

NEW RULE XVIII POSITIVE CHILD GUIDANCE (1) All child care program staff must use guidance approaches appropriate to the child's age and developmental level to help children resolve conflicts, manage transitions, engage in challenging situations, or express feelings, needs, and wants.

(a) Positive child guidance should include forming positive adult-child relationships, clear direction, showing positive alternatives, redirection, and setting expectations and clear limits that foster the child's ability to become self-regulated.

(b) All staff must model appropriate behaviors for children in the program.

(2) All child care program staff are prohibited from using abusive or physical punishment, including:

(a) spanking or other forms of physical punishment;

(b) shaking an infant or child of any age;

(c) any punishment or discipline that is humiliating, shaming, frightening, or otherwise damaging to the child or their family; or

(d) punishment for any toilet training issue.

(3) Parental or guardian permission does not allow for the use of any physical punishments or other approaches to discipline listed in (2).

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-2-201, 53-2-211, 53-2-212, 53-4-611, MCA

NEW RULE XIX ADMINISTRATIVE DEFINITIONS (1) "Abusive head trauma" means a preventable and severe form of physical child abuse that results in an injury to the brain of a child caused by violent shaking and/or with blunt impact.

(2) "Expulsion" or "expel" means terminating the enrollment of a child.

(3) "Shaken baby syndrome" is a preventable, severe form of physical child abuse resulting from violently shaking an infant by the shoulders, arms, or legs, which may result from both shaking alone or from shaking with impact.

(4) "Suspension" means reducing the amount of time a child may be in attendance, either by requiring the child to stop attending for a particular period of time or reducing the number of days or hours that a child may attend. Requiring a child to attend the program in a special place away from the other children in the regular group setting is included in this definition.

(5) "Volunteer" means any person who is not compensated with employment pay or benefits.

AUTH: 52-2-704, 53-4-212, MCA
IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-2-201, 53-4-211, 53-4-212, 53-4-611, MCA

NEW RULE XX EMERGENCY COMMUNICATION (1) Each licensed and registered FFN facility must have:

(a) a working telephone;

(b) telephone numbers of local law enforcement, emergency services, and the Emergency Montana Poison Control Center (800) 222-1222 posted where they are visible to staff; and

(c) emergency contact information for each child easily accessible to staff in a location that maintains privacy for families.

AUTH: 52-2-704, 52-2-731, 52-2-735, MCA
IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 52-2-732, 52-2-734, 52-2-735, MCA

NEW RULE XXI POLICY REQUIREMENTS (1) All licensed child care programs must adopt and follow written policies for first aid consistent with recommendations from Caring for Our Children: National Health and Safety Performance Standards, Guidelines for Early Care and Education Programs. These must include:

(a) procedures for handling medical emergencies;

(b) a plan for preventing and responding to emergencies due to food and allergic reactions;

(c) a plan for providing cardiopulmonary resuscitation (CPR) in a timely manner;

(d) directions to complete an incident or injury report and report incidents involving first aid, emergency services, hospitalization, or medical treatment while children are receiving care:

(i) If the incident only requires onsite first aid, a copy of the report must be provided to the parents/guardians of the children involved, and a copy retained on file at the child care program.

(ii) If the incident requires emergency services, hospitalization, or medical treatment, a copy of the report must be provided to the parents/guardians of the children involved, a copy retained on file at the child care program, and a report must be made to CCL within 24 hours of the incident.

(e) directions for calling parents/guardians or someone else designated as responsible for the child when a child is sick or injured; and

(f) a written medication administration policy which must include:

(i) types of medication which may be administered; and

(ii) medication administration procedures to be followed for each child, including the route of medication administration, the amount of medication given, and the times when medication is to be administered.

(2) All licensed child care programs must have a written emergency disaster plan for each structure in which child care is provided. Emergency disaster plans must include:

(a) plans for evacuation, including identification of at least one off-site gathering point;

(b) plans to address children's individual needs, including mobility and special health care needs;

(c) staff responsibilities;

(d) plans for communicating with parents/guardians and reunifying children with their parents/guardians;

(e) plans to shelter in place and lock down; and

(f) plans for continuity of operations.

(3) All licensed child care programs serving children under two years old must develop a written policy that describes the practices to be used to promote a safe sleep environment. All child care staff must sign an acknowledgement indicating that they have read and understood the facility's safe sleeping policy.

(4) All licensed child care programs must have a written policy on identifying and preventing shaken baby syndrome and abusive head trauma. The policy must include:

(a) how the child care program will ensure all staff are knowledgeable about and able to recognize the signs and symptoms of shaken baby syndrome and abusive head trauma;

(b) procedures for coping with a crying, fussing, or distraught infant or child; and

(c) mandatory reporting of suspected child abuse and neglect.

(5) If providing any transportation, the licensed child care program must develop a written transportation policy that outlines safe transport practices.

(6) If providing any opportunity for children to use swimming pools or be near other bodies of water, the licensed child care program must develop a written water safety policy that outlines safe supervision practices for children in and around water.

(7) FFN providers have limited policy documentation requirements. FFNs must provide written health and safety standards to parents/guardians and the department relating to:

(a) managing infectious disease;

(b) safe sleep practices, if caring for children under two years old;

(c) medication administration;

(d) food and allergy emergencies;

(e) shaken baby syndrome and abusive head trauma;

(f) emergency preparedness;

(g) transportation safety, if applicable; and

(h) mandatory reporting of suspected child abuse and neglect.

(8) If a child care program has obtained a waiver of any rule in this subchapter approved by the department, the program must develop a written alternative plan that includes policies and procedures to maintain compliance.

(9) All policies must be reviewed and updated annually by the program.

AUTH: 52-2-704, 52-2-735, MCA
IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 52-2-732, 52-2-734, 52-2-735, MCA

NEW RULE XXII RECORD RETENTION (1) Child care programs can maintain records in paper or electronic format. The department must be able to easily access such records. Records may be stored on-site or in the program's administrative office.

(a) The program must make records available during normal working hours to representatives of the department.

(2) The program must make records available to parents/guardians upon request.

(3) All records that the department requires the provider to maintain must be kept for three years, unless otherwise provided by law.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-732, MCA

NEW RULE XXIII PROGRAM RECORDS (1) Child care programs must maintain the following records as applicable to the program type:

(a) All child care programs must maintain:

(i) a copy of the current license, inspection reports by department staff, and correction plans for deficiencies;

(ii) documentation that any vehicle used for transportation of children while in care is registered and insured in accordance with state law;

(iii) results of well-water tests and lead paint tests, as applicable;

(iv) documentation that the facility complies with sewer requirements of this chapter;

(v) a log of fire extinguisher and smoke detector checks;

(vi) a medication administration log if medications are administered at the facility; and

(vii) a real-time attendance record of the children in care.

(b) All licensed child care programs must maintain:

(i) proof of current fire and liability insurance coverage for the provision of child care in the facility;

(ii) a record of each emergency drill conducted;

(iii) a master list of the name, address, and phone number of all children in care and their parents/guardians;

(iv) incident and injury reports which include the date, time of day, nature of the injury or incident, treatment, or remediation, and whether the parent/guardian was notified for any injury or incident that occurs in the facility; and

(v) written menu records.

(c) Providers serving 16 or more children must maintain:

(i) an annual inspection report from the state fire marshal or the fire marshal's official designee indicating the fire safety rules have been met; and

(ii) an annual inspection report from public health authorities certifying the satisfactory completion of training or a certificate of approval following inspection by local health authorities.

(2) If a child care program has obtained a waiver from any rule in this subchapter, a copy of the alternate plan and its approval by the department must be on file.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-722, 52-2-723, 52-2-731, 52-2-732, MCA

NEW RULE XXIV CHILDREN'S RECORDS (1) All child care staff and volunteers must maintain personal information about a child and the child's family as confidential.

(2) All child care programs must have the following information prior to a child being enrolled or entered into a child care program. Forms must be signed by the parent or guardian:

(a) Written health information explaining any special medical needs of the child, including allergies, and a health care and medication plan if medication for chronic health conditions is required.

(i) Providers administering medications must have necessary medical documentation, including medication authorizations, the name of a health care provider to be contacted in event of an emergency, and the prescription, if required.

(b) Authorization of persons allowed to pick up the child.

(c) An emergency consent form and the names and contact numbers of emergency contact persons. This form must accompany staff when children are away from the child care site for activities.

(3) All child care programs must maintain the following records related to enrolled children:

(a) the name, address, and phone number of children and their parents/guardians;

(b) a medication administration log if medications are administered to children at the facility;

(c) documentation of incidents and injuries which includes the date, time of day, nature of the injury or incident, treatment, or remediation, and whether the parent/guardian was notified for any injury or incident that occurs in the facility;

(d) written parent/guardian permission to swaddle children under three months old, if desired by the parent/guardian;

(e) for children 12 to 18 months old who are placed on a cot or mat, a signed statement indicating that the parent/guardian has given permission for their child to be placed on a cot or mat;

(f) special dietary instructions written by parents/guardians;

(g) written consent from the parents/guardians for any transportation provided; and

(h) signed and updated immunization record.

(4) Children's records must be reviewed and updated as necessary, but not less frequently than once per year.

AUTH: 52-2-704, 52-2-735, MCA
IMP: 52-2-702, 52-2-704, 52-2-723, 52-2-731, 52-2-732, 52-2-735, 52-2-736, MCA

NEW RULE XXV STAFF RECORDS (1) If a child care program employs staff, it must maintain the following records for each staff member:

(a) emergency contact information; and

(b) acknowledgement of and agreement to follow program policies for:

(i) identifying and preventing shaken baby syndrome and abusive head trauma;

(ii) mandatory reporting; and
(iii) safe sleep, if the program provides care for children under two years old.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-722, 52-2-723, 52-2-731, 52-2-732, MCA

NEW RULE XXVI FAMILY ACCESS TO INFORMATION (1) Before a child is enrolled at any licensed child care program, the following information must be made available to all parents/guardians, as applicable:
(a) a typical daily schedule of activities;
(b) admission requirements, enrollment procedures, and hours of operations;
(c) frequency and type of meals and snacks served;
(d) fees and payment plan;
(e) regulations concerning sick children;
(f) transportation and trip arrangements;
(g) positive child guidance policy; and
(h) expulsion and suspension policy.
(2) All child care programs must post a copy of the facility registration or license and the phone number of state and local Early Childhood and Family Support Division offices in a place where parents/guardians can see it. Parents/guardians should be encouraged to contact the division if they have questions regarding the license or child care regulations.
(3) All child care programs must allow custodial parents, non-custodial parents, and legal guardians access to the facility at any time during which child care is provided, unless there is a current court order preventing parent-child contact.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-713, 52-2-723, 52-2-731, 52-2-732, 52-2-735, 52-2-736, MCA

NEW RULE XXVII NOTIFICATIONS TO THE DEPARTMENT (1) Programs must notify the department of any changes that would affect the terms of the license or registration, including changes in staff, temporary or permanent closures, transfer of ownership of the program, changes in the category of license or registration based on the number and ages of children in child care, or changes to the child care property.
(2) The program must provide the department with any change in the provider's mailing address within ten days of the change.
(3) All staff and owners in licensed and registered child care programs are mandatory reporters of suspected child abuse and neglect as defined in 41-3-201, MCA. Any child care staff member or owner who has reason to suspect that any child is or has been abused or neglected is required to personally report the matter promptly to the department's child abuse hotline at (866) 820-5437. The staff member or owner must make the report within 24 hours of receiving information concerning suspected child abuse or neglect.

(4) All child care programs must report to CCL the following events involving the child care facility, regardless of whether it occurs on or away from the premises within 24 hours:

(a) a lost or missing child or an incident involving a child being left alone;

(b) suspected maltreatment of a child;

(c) suspected sexual, physical, or emotional abuse by staff, other children, family members, or other adults;

(d) injuries to children requiring medical or dental care;

(e) illness or injuries requiring hospitalization or emergency treatment;

(f) mental health emergencies;

(g) health and safety emergencies involving parents, guardians, and visitors to the program;

(h) death of a child or staff member, if the death was the result of a serious illness or injury that occurred on the premises of the child care facility, even if the death occurred outside of the child care facility;

(i) the presence of a threatening individual who attempts or succeeds in gaining entrance to the child care facility;

(j) fire involving the fire department; and

(k) any environmental danger or other hazard at the facility that the provider is aware of that could affect the health, welfare, or safety of children in care.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE XXVIII SAFETY AND FACILITIES DEFINITIONS (1) "Bodies of water" means rivers, streams, ponds, ditches, fountains, and other water sources into which a child can step.

(2) "Crib" means a bed that is designed to provide a sleeping environment for children under two years old that meets U.S. Consumer Product Safety Commission requirements.

(3) "Exit" means the point (door or window) that allows people inside the facility to leave and move to the outside of the facility.

(4) "Firm sleep surface" means a crib mattress or a cradleboard.

(5) "Means of egress" means a continuous and unobstructed path from any point inside a facility to a safe place outside of the facility.

(6) "Portable wading pool" means a structure which contains water, is used for aquatic activities, and is less than 24 inches high.

(7) "Remote means of egress" means two exits whose distance apart is equal to or greater than one-half the diagonal distance of the space occupied to minimize the possibility that both exits will be blocked off by a fire or other emergency condition.

(8) "Safe sleep environment" means an environment where a child under 12 months old is placed on a firm sleep surface with no incline and no items in the sleeping environment other than a pacifier, and a child 12 months old or older is placed on a firm sleep surface or on a cot or mat. A safe sleep environment does not include waterbeds, water mattresses, gel pads, or sheepskin covers.

(9) "Sauna" means a small room or structure used for hot-air or steam baths.

(10) "Spa" means a hot tub or similar large tub of hot water.

(11) "Transportation" means any time a child is transported in a motor vehicle.

AUTH: 52-2-704, 53-4-212, MCA
IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-2-201, 53-4-211, 53-4-212, 53-4-611, MCA

NEW RULE XXIX HAZARDS (1) All child care programs are responsible for keeping hazardous materials and objects inaccessible to children in care, including personal property of staff and licensee.

(2) Cleaning materials, flammable liquids, aerosol cans, and other toxic materials must be kept in their original containers and in a place inaccessible to children. They must not contaminate play surfaces, food, food preparation areas, or constitute a hazard to the children when used.

(3) Bio-contaminants including blood, bodily fluids, and other infectious materials must be properly disposed of.

(4) The building and grounds used by children must be maintained to ensure the following:

(a) the building is in good repair;

(b) the floors, walls, ceilings, furnishings, and other equipment are easily cleanable and reasonably clean;

(c) the building and grounds are reasonably free of insects, rodents, and other vermin;

(d) the building and grounds are reasonably neat and free from the accumulation of dirt, rubbish, or other health and safety hazards;

(e) all rooms must be dry, well ventilated, and well lit; and

(f) the children attending the facility must not be exposed to paint containing lead in excess of .0009%.

(5) During business hours, any guns stored on the premises of a child care facility must be kept in locked storage. Ammunition must be kept in locked storage separate from the gun.

(6) Electrical outlets must be tamper-resistant or covered in areas occupied by children under five years old, and exposed light sockets must be suitably protected to prevent electrocution.

(7) Toys, play equipment, and any other equipment used by the children must be sturdy and free from rough edges, sharp corners, splinters, and must be kept in good repair.

(8) Choking hazards must not be accessible to children who are still placing objects in their mouths, including:

(a) toys and objects with a diameter of less than one inch (2.5 centimeters) and objects with removable parts that have a diameter of less than one inch (2.5 centimeters);

(b) plastic bags;

(c) Styrofoam objects; and

(d) balloons.

(9) Full-size trampolines, ball pits, and other inflatable play structures are prohibited for use by children in care and, if they exist on the premises, must be inaccessible to children in care.

(a) Mini trampolines are permitted when used according to manufacturer's guidelines, by one child at a time, and with supervision.

(10) Bathtubs, buckets, water tables for play, and other water receptacles must be emptied immediately after use.

(11) Guardrails, gates, or protective barriers must be installed along open-sided walking surfaces including stairs, ramps, and landings, where there is more than a 36-inch vertical distance to fall.

AUTH: 52-2-704, 52-2-731, 52-2-735, MCA
IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-724, 52-2-731, 52-2-734, 52-2-735, MCA

NEW RULE XXX ANIMALS (1) Any pet or domesticated animal present at any child care facility, indoors or outdoors, must be in good health, show no evidence of carrying disease, and be trained to be with children or kept separate from children, families, and staff.

(2) Staff must closely supervise all interactions between children and animals and instruct children on safe behavior when near animals.

(3) The program is responsible for:

(a) maintaining the animal's vaccinations and vaccination records; and

(b) making vaccination records available to the department upon request.

(4) The program must make reasonable efforts to keep stray animals off the premises.

AUTH: 52-2-704, 52-2-731, MCA
IMP: 52-2-702, 52-2-704, 52-2-723, 52-2-724, 52-2-731, 52-2-734, 52-2-735, MCA

NEW RULE XXXI BUILDING REQUIREMENTS RELATED TO EXITS (1) In an emergency, all occupants must be able to escape from the facility in a safe and timely manner.

(a) Doorways, aisle ways, corridors, and stairs must be clear of any obstruction.

(i) Gates or guards at the top and bottom of stairways are allowed if they have latching devices that are easily opened by adults in case of emergency.

(ii) Sleeping equipment must be arranged to permit easy access to every child and unobstructed means of egress.

(2) All facilities must have two exits that create remote means of egress on each level that is used by the child care program.

(a) All nap rooms must have at least two means of egress.

(b) Exits/means of egress must meet the following requirements:

(i) one exit must be a door that is at least 32 inches wide and 80-inches tall; and

(ii) the second exit may be a window that provides a clear opening of at least 20 inches in width or 24 inches in height and 5.7 square feet in area. The bottom of the exit must not be more than 44 inches above the floor.

(3) Exit doors, windows, and their opening hardware must be maintained in good repair.

(4) If the child care program chooses to lock exterior facility doors to prevent unauthorized access to the facility or to prevent a child from escaping, the lock:

(a) may not prevent free escape from the interior;

(b) must be easily opened with one motion from the inside of the facility; and

(c) may not prohibit access by parents/guardians. A facility may not use locking devices to prevent unannounced access by authorized individuals, including parents/guardians. If a lock is used, the provider must make adequate provision to allow authorized persons unannounced access to the facility and must provide authorized personnel including parents/guardians with information on how to gain access.

(5) Children must be able to open every closet door from the inside without a key, a tool, or special knowledge or effort.

(6) Every bathroom door must be designed to permit opening of the locked door from the outside in an emergency. The opening device must be readily accessible.

(7) This rule applies to all child care program facilities.

AUTH: 52-2-704, 52-2-731, MCA
IMP: 52-2-702, 52-2-704, 52-2-723, 52-2-724, 52-2-731, 52-2-734, 52-2-735, MCA

NEW RULE XXXII INDOOR SPACE REQUIREMENTS (1) All child care programs must ensure there is at least 35 square feet of usable floor space per child who will be in a room at any one time. A program may request a waiver from this rule with an alternate plan, such as when limited indoor space is offset by sheltered outdoor space.

(2) Calculation of the required minimum 35 square feet of space per child must exclude food preparation areas of the kitchen, bathrooms, toilets, offices, staff rooms, corridors, hallways, closets, lockers, laundry areas, furnace rooms, cabinets, shelving, and other storage spaces.

(3) When play and sleep areas for children are in the same room, a minimum of 35 square feet of usable space per child must be provided except for:

(a) when large group activities, such as educational assemblies, occur; and

(b) periods when children are using their rest equipment.

(4) During sleep periods, the area must be sufficient to provide spacing between the children using sleep equipment.

(5) The equipment and furniture arrangement must permit unobstructed floor area sufficient to allow play appropriate for each group of children in care.

(6) In programs with 16 or more children that include infants and toddlers, play areas for infants must be separate from play areas used by children over two years old, or not be used for any children over two years old while being used for children under two years old. Sleeping areas must be separate from play areas.

(7) A child care program with 16 or more children must have sufficient space and appropriate furniture and equipment to provide for support functions, such as storage, food preparation, custodial services, laundry, and administrative office functions.

(8) Programs that use shared spaces should care for children in the licensed, dedicated space most of the time.

(9) Family and group child care programs must not use third stories in private homes for child care purposes; such stories must be barricaded or locked to prevent entry by children. The use of second or higher stories in commercial or apartment buildings is subject to fire and building code requirements.

AUTH: 52-2-704, 53-4-503, MCA
IMP: 52-2-702, 52-2-704, 52-2-723, 52-2-731, 52-2-734, MCA

NEW RULE XXXIII OUTDOOR SPACE REQUIREMENTS (1) Outdoor play space must contain a minimum of 75 square feet of usable space per child accessing the play space at any given time. A provider may request a waiver from this rule if a program does not have enough outdoor play space to accommodate all enrolled children at one time with an alternate plan such as:

(a) offsetting limited outdoor space with indoor space not included in indoor space calculations, such as a gym, permitting an equivalent activity program; or

(b) offsetting limited outdoor or unfenced space with the availability or use of a nearby school playground, parks, or other safe outdoor play areas.

(2) Outdoor play areas at all child care facilities must be surrounded by a fence or natural barrier that is at least four feet high and in good repair without any holes or spaces greater than four inches in diameter.

(a) If a program submits an alternative plan for outdoor space that includes space not completely surrounded by a fence, the program must include, in the plan, details about supervision to maintain safety.

(3) Any outdoor play area must be maintained free from health and safety hazards such as wells, machinery, and animal waste.

(4) Provisions must be made for both sunny and shady activity areas.

(5) Outdoor areas must be designed or monitored so that all parts are always visible, allowing for direct supervision by child care staff.

(6) All child care programs must anchor outdoor equipment, such as a climbing apparatus, slides, and swings, firmly, and place in a safe location according to manufacturer's instructions.

(7) All licensed child care programs must maintain ground cover under outdoor equipment, which must be a shock-absorbing surface as defined by the U.S. Consumer Product Safety Commission, or with a minimum of six inches of sand, fine gravel, or woodchips.

(a) Out-of-school-time programs operating on school premises or utilizing other inspected outdoor space must follow the outdoor equipment requirements of the premises and are not subject to additional licensing requirements.

AUTH: 52-2-704, 52-2-731, MCA

IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 52-2-734, 52-2-735, 52-2-736, MCA

NEW RULE XXXIV FIRE SAFETY REQUIREMENTS (1) Child care programs with 16 or more children must meet International Fire Code requirements to open and operate a child care facility. New programs planning to serve 16 or more children should consult with their local jurisdiction or state fire marshal before selecting a facility.

(2) Child care programs with 16 or more children must provide to CCL an annual inspection report from the state or local jurisdiction fire marshal indicating the fire safety rules have been met.

(a) Programs using a commercial or public space that receive an annual fire safety inspection, such as a school, do not need a separate inspection. The child care program is responsible for providing a copy of the inspection reports to CCL.

(3) Group child care, family child care, and FFN programs must meet fire safety requirements by:

(a) having a fire extinguisher that:

(i) is easily accessible on each floor level that is used by the child care program;

(ii) has a minimum level of extinguisher classification of 2A10BC;

(iii) has a hose and weighs a minimum of five pounds; and

(iv) is installed and maintained in accordance with manufacturer's guidelines;

(b) having operational UL smoke alarms on each floor of the facility that is used by the child care program that are:

(i) installed in accordance with the manufacturer's specifications;

(ii) installed in front of the doors to stairways, in corridors of all floors, and in all rooms where children sleep; and

(iii) tested at least once a month to ensure that they are operating correctly and replaced every ten years;

(c) ensuring all wood burning stoves meet building codes and have a protective enclosure if used during the hours of care;

(d) not using portable electric or unvented fuel-fired heating devices, and ensuring all radiators, if too hot to touch, have a protective enclosure; and

(e) using extension cords according to manufacturer's guidelines and not using an extension cord as permanent wiring.

AUTH: 52-2-704, 52-2-731, MCA

IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-724, 52-2-731, 52-2-734, 52-2-735, MCA

NEW RULE XXXV EMERGENCY AND DISASTER PREPARATION (1) All licensed child care programs must have a written emergency disaster plan. The plan for each structure used for child care must be developed in such a way that the plan can be followed in the event of a natural or human-caused disaster or emergency.

(2) All licensed child care programs must conduct eight emergency drills per year, including six fire drills, and two other disaster drills. Programs should identify problems that occurred during the drill and define corrective actions.

(3) FFN providers must conduct at least two disaster drills per year, including one fire drill and one other disaster drill.

(4) All emergency drills must be documented and include the following minimum information:

(a) who conducted the drill;

(b) date and time of the drill;

(c) the number of adults and children present during the drill; and

(d) the length of time to evacuate.

(5) All child care programs must have an emergency disaster kit including an emergency supply of blankets, water, food, and supplies.

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 52-2-734, MCA

NEW RULE XXXVI SAFETY AROUND BODIES OF WATER (1) All child care programs must ensure all in-ground and above-ground swimming pools located in the outdoor play space area or accessible to children are surrounded by a fence that is least five feet high with a locked gate to prevent access to children. The fence must come within 3 ½ inches of the ground, and be constructed to discourage climbing. Exit and entrance points must have self-closing, positive latching gates with locking devices a minimum of 55 inches from the ground. The child care building wall must not constitute one side of the fence unless there are no openings in the wall.

(2) Children must not be permitted in hot tubs, spas, or saunas.

(a) Hot tubs must have bolted and securely locked covers.

(b) Spas and saunas must be inaccessible to children.

(3) Ponds and other bodies of water on child care program premises must be surrounded by a fence that is at least five feet high to prevent access by children.

(4) Portable wading pools are permitted. If the portable wading pool is filled with water and will sit unused for any period of time prior to use by children, the program must equip the wading pool with a fence, wall, gate, or screen that locks to prevent unsupervised access by children.

(5) When children are swimming or in any body of water, children must be continuously supervised with the following requirements:

(a) Children under 36 months old must have one-on-one supervision and always be either in direct contact or within arm's reach of the supervising adult who must be in the water.

(b) Children ages three to five years old must be supervised using 4:1 child-to-staff ratio. Children must be within arm's reach of the supervising adult who must be in the water.

(6) When children of any age are swimming in a pool or in a body of water without a lifeguard, a staff member with an advanced life-saving or an equivalent certificate by a recognized organization must continuously supervise children. This

staff member must not be counted in the child-to-staff ratio. One person with an advanced life-saving or an equivalent certificate is required for each group of 25 or fewer children.

(a) A staff member must continuously supervise children using a portable wading pool.

(7) Each swimming pool more than six feet in width, length, or diameter must be equipped with an easily accessible ring buoy and rope and either a throw line or a shepherd's hook of sufficient length to reach the center of the pool from the edge of the pool.

(8) Swimming pool safety rules must be posted near the swimming pool.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-731, 52-2-735, MCA

NEW RULE XXXVII TRANSPORTATION SAFETY (1) If providing any transportation, all licensed child care programs must:

(a) obtain written consent from the parents/guardians for any transportation provided; and

(b) develop a written transportation policy that outlines safe transport practices. The plan must describe how children are transported to and from the program, in an emergency, and on field trips. The plan must also address the safety and supervision of children who walk and who arrive by public transportation once they arrive on the child care premises. The plan must include any special arrangements for children with disabilities.

(2) All child care programs providing transportation for children of any age must ensure:

(a) that the operator of the vehicle transporting children be at least 18 years old and possess a valid Montana driver's license;

(b) that the passenger doors on the vehicle transporting children be locked whenever the vehicle is in motion;

(c) with the exception of public transportation that is not required by law to be equipped with safety restraints, that no vehicle begin moving until all children are seated and secured in age and weight-appropriate safety restraints, which must remain fastened at all times the vehicle is in motion;

(d) that all car seats and booster seats be used according to National Highway Traffic Safety Administration standards; and

(e) that children never be left unattended in a vehicle.

(3) All child care programs providing transportation for children under six years old must ensure that an adult accompanies each child to and from the vehicle to the child's home or the home authorized by the parents/guardians to receive the child.

(4) Programs using school buses must comply with the school bus regulations defined in ARM 10.7.110(3) through (5) and ARM 10.64.301.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-733, MCA

NEW RULE XXXVIII SLEEPING (1) In all child care programs except out-of-school time programs, there must be adequate opportunities for sleep periods during the day in a safe sleep environment suited to individual needs.

(2) In all child care programs except out-of-school time programs, each child must have age-appropriate rest equipment and supervision that create a safe sleep environment, meaning:

(a) for infants under 12 months old:

(i) each infant must be provided with a firm sleep surface;

(ii) if an infant sleeps in a crib, a firm mattress must be covered by a tight-fitting sheet. Mattresses must fit snugly to prevent the infant from being caught between the mattress and crib siderail;

(iii) unless the parent/guardian has provided medical documentation from a health care provider ordering otherwise, infants must be placed on their back and on a firm surface with no incline while sleeping;

(iv) no items are allowed in the crib when an infant is laid down for sleep except for a pacifier that does not include a string;

(v) sleep sacks and similar safe sleep clothing may be used if the item does not restrict the infant's arms;

(vi) children under three months old may only be swaddled with written parent/guardian permission on file with the program;

(vii) children over three months old or able to roll over must not be swaddled; and

(viii) when cribs are used, infants must be continuously supervised through sight or hearing, including proper use of audio or video monitors;

(b) for children 12 to 36 months old:

(i) at the discretion of the parent/guardian and provider, a cot or mat may be used if a safe sleep environment is provided;

(ii) children 12 to 18 months old who are placed on a cot or mat must have a signed permission statement in the file indicating that the parent/guardian has given permission for their child to be placed on a cot or mat;

(iii) children may be provided a clean washable blanket or other suitable covering for their use while sleeping; and

(iv) when cots and mats are used, children must be continuously supervised through sight or hearing, including proper use of audio or video monitors.

(A) In a child care program serving 16 or more children, a staff member must remain with children while they are sleeping.

(3) All cries of children during sleep times must be investigated.

(4) Any program providing night care must have a supervision plan which involves practices where no child is left unattended. Staff must be in the immediate vicinity and on the same floor level of sleeping children to adequately hear and respond to the children if they wake up and to respond to any emergency.

(5) Children of any age must not be allowed to sleep in a car seat, infant swing, bouncy seat, or other infant apparatus.

(6) Sleeping equipment must be thoroughly cleansed before assignment to another child.

(7) Crib mattresses must be waterproof and easily sanitized.

(8) Cot or mat surfaces may be of plastic or canvas or other material which can be cleaned with detergent solution and allowed to air dry.

(9) Each child's bedding must be stored separately.

(10) Cribs must be made of durable, cleanable, nontoxic material, and have secure latching devices.

(11) All cribs must meet the requirements as specified by the U.S. Consumer Product Safety Commission.

(12) Cribs, cots, or mats must be spaced to allow for easy access to each infant and toddler, adequate ventilation, and easy exit.

(13) The use of stackable cribs for infants is permitted until the infants reach one year old or weigh 26 pounds, whichever comes first. Licensed programs must develop a policy that describes the practices to be used to promote a safe sleeping environment when children are sleeping.

AUTH: 52-2-704, 52-2-731, 52-2-735, MCA
IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-724, 52-2-731, 52-2-734, 52-2-735, MCA

NEW RULE XXXIX MEDICAL HEALTH DEFINITIONS (1) "CPR" means cardiopulmonary resuscitation.

(2) "Health care provider" means a person who is licensed, certified, or otherwise authorized by any U.S. state or by Canada to provide health care and who meets the additional qualifying criteria specified in 20-5-405, MCA.

(3) "Local health authority" or "local health jurisdiction" means a local health officer, local department of health, or local board of health.

(4) "Medication" includes "prescription medication" and "over-the-counter medication" as defined in this rule.

(5) "Over-the-counter medication" means any medication, ointment, or cream that is topical or oral and is not specifically prescribed by a health care provider, but is recommended by a health care provider or a parent or guardian for a specific child.

(6) "Physician" means a person licensed to practice medicine in any jurisdiction in the United States or Canada and who holds a degree as a doctor of medicine or of osteopathy.

(7) "Prescription medication" means medication prescribed by a licensed health care provider for a specific person which may only be obtained through a pharmacy.

(8) "Supplement" means vitamins, herbals, and other topical or oral substances that are not regulated by the U.S. Food and Drug Administration.

AUTH: 52-2-704, 53-4-212, MCA
IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-2-201, 53-4-211, 53-4-212, 53-4-611, MCA

NEW RULE XL MEDICATION ADMINISTRATION (1) No child care staff of any child care program type may administer any medication or supplement to a child without the written authorization of a parent or guardian. The authorization must

include the child's name, duration of the authorization, dosage instructions (amount and time), and the signature of the child's parent or guardian.

(2) Any medication or supplement brought into the facility for use by a specific child must be labeled with the following information:

(a) the date range and duration of use;

(b) the child's first and last name;

(c) the expiration date and specific, legible instructions for administration and storage (i.e., the manufacturer's instructions); and

(d) the name of the health care provider, parent, or guardian who made the recommendation.

(3) Any prescription medication brought into the facility by the parent or legal guardian of a child must be kept in the original container labeled by a pharmacist with the date the prescription was filled.

(4) All medications and supplements for children and staff must be kept in a location inaccessible to children or kept in a locked box.

(5) All medications for children and staff, refrigerated or unrefrigerated, must:

(a) have child-protective caps;

(b) be kept in an orderly fashion; and

(c) be stored away from food and at proper temperatures.

(6) Medication and supplements must not be used beyond the date of expiration. Expired medication and supplements must be properly disposed of or removed from the child care facility.

(7) If an emergency arises and the parent or guardian of the child is unavailable, child care program staff may administer medication to a child if either:

(a) a health care provider provides a written authorization containing the child's name, date or dates for which the authorization is applicable, dosage instructions, and the health care provider's signature; or

(b) a health care provider, emergency service provider, or 911 responder verbally directs the child care program staff to immediately administer a medicine to the child, in which case the child must then be transported to a health care facility or a health care provider for follow up care within a reasonable time by the child's parent or guardian or by child care program staff.

(8) Child care program staff may not give medication to a child in a manner that is inconsistent with the container instructions on dosage or frequency unless directed to do so by a health care provider as provided in 52-2-736, MCA.

(9) If the child care program elects to administer medication or supplements to children, the program must maintain a medication record, a written medication administration policy, and a health care and medication plan for children who have special health care needs, or those requiring medication for chronic health conditions.

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-724, 52-2-731, 52-2-732, 52-2-733, 52-2-736, MCA

NEW RULE XLI MANAGEMENT OF ILLNESS (1) All child care programs must designate a staff member to check daily the health status of each child immediately upon that child's entry into the child care facility.

(2) All child care programs must exclude any child or staff member with an illness until symptoms have resolved, adequate treatment has been received, or a health care provider states that the person is noninfectious. The following symptoms or illnesses require exclusion:

(a) a fever of 100.4°F that is accompanied by behavior change or other symptoms;

(b) diarrhea;

(c) vomiting more than two times in the previous 24 hours;

(d) mouth sores with drooling, if unable to contain drool, unless a health care provider states that it is a noninfectious condition;

(e) a rash with fever or behavioral change or a rash that is quickly spreading, unless a health care provider states that it is a noninfectious condition;

(f) active tuberculosis, until a health care provider states that the person is noninfectious and can return;

(g) group A strep pharyngitis (strep throat) until the person appears well and at least 12 hours after beginning appropriate antimicrobial therapy;

(h) impetigo, until treatment is initiated and if lesions on exposed skin are covered with a waterproof dressing;

(i) head lice, scabies, or ringworm, until treatment is started. Children and staff can remain in the child care setting until the end of the day;

(j) chickenpox (varicella), until sores have dried or crusted. Child care programs must not purposefully expose susceptible children to chickenpox, even with the permission of the susceptible child's parents/guardians;

(k) rubella, until seven days after the rash appears;

(l) pertussis, until five days after antibiotic treatment was initiated;

(m) mumps, until five days after onset of parotid gland swelling;

(n) measles, until four days after onset of rash;

(o) hepatitis A, until one week after onset of illness or as directed by the local health authority;

(p) shigellosis, salmonella, or E. coli, until a local health authority clears the person for readmission; or

(q) if the child is unable to participate in activities or needs care from staff that compromises the health or safety of other children.

(3) Children and staff must be excluded from all child care programs, and a health care provider must evaluate the conditions to ensure the person's return will not harm that person or the other people, when a child or staff:

(a) has symptoms of severe illness, such as fever with behavior change, lethargy, uncontrolled coughing, breathing difficulty or wheezing, stiff neck, irritability, persistent crying, poor food or fluid intake, progressive rash with any other symptoms, or a seizure; or

(b) has persistent abdominal pain for two or more hours, or intermittent abdominal pain associated with fever, dehydration, or other signs or symptoms of illness.

(4) A child or staff member does not need to be excluded, but parents/guardians should be notified of new onset, for minor illnesses or symptoms including:

(a) a runny nose or cough not accompanied by a fever;

(b) pinkeye or other eye discharge not accompanied by fever;

(c) fever without behavior change for people aged four months and older, including children with immunization-related fevers; or

(d) rash without behavior change or fever and that is not quickly spreading.

(5) If a child develops symptoms of any illness other than those included in (2) or (3) while at the child care program and after the parent or guardian has left, the child care program must:

(a) isolate the child immediately from other children in a room or area segregated for that purpose; and

(b) contact and inform the parent or guardian as soon as possible about the illness and request the parent or guardian to pick up the child.

(6) Disease charts that identify reportable diseases are available from the department. A child care program must notify the local health authority, on the same day or as soon as possible if no contact can be made the same day, if:

(a) a child becomes ill or is suspected of having a communicable disease reportable to the health department while in care;

(b) a child is absent and a reportable communicable disease is suspected; or

(c) there is an outbreak of any reportable communicable disease detected in a child care facility.

AUTH: 52-2-704, 52-2-735, MCA
IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-724, 52-2-731, 52-2-735, MCA

NEW RULE XLII FIRST AID (1) All child care facilities must maintain a complete, well-stocked, portable first aid kit. The first aid kit must accompany staff and children on trips away from the facility and must contain:

(a) sterile, absorbent bandages;

(b) antiseptic wipes or product to clean wounds and hands;

(c) a cold pack;

(d) tape and a variety of adhesive bandages;

(e) tweezers and scissors; and

(f) disposable single use gloves.

(2) Child care program staff must take appropriate precautions to minimize the risk of any child suffering sunburn, heat stroke, or receiving insect bites. Children under six months old should be kept out of direct sunlight.

(a) Sunscreen must be applied to children over six months old when outdoor conditions dictate.

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-704, 52-2-723, 52-2-724, 52-2-731, 52-2-736, MCA

NEW RULE XLIII ENVIRONMENTAL HEALTH DEFINITIONS (1) "Public sewage system" means a system of collection, transportation, treatment, or disposal of sewage that is designed to serve or serves 15 or more families or 25 or more persons for a period of at least 60 days out of the calendar year.

(2) "Public water supply system" means a system for the provision of water for human consumption from any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that is designed to serve or serves 15 or more families or 25 or more persons daily or has at least 15 service connections at least 60 days out of the calendar year.

(3) "Smoke-free environment" means no smoking, vaping, or use of e-cigarettes.

AUTH: 52-2-704, MCA
IMP: 52-2-704, MCA

NEW RULE XLIV HEALTH RULES INCLUDED IN INSPECTION BY PUBLIC HEALTH AUTHORITIES (1) Licensed child care centers, drop-in child care programs, and out-of-school-time programs with 16 or more children must provide to CCL an annual training or inspection certificate from their local health authority, except:

(a) Programs using a commercial or public space that receive an annual public health inspection, such as a school, do not need a separate inspection. The child care program is responsible for providing a copy to CCL.

(2) Child care programs requiring a public health inspection may request a waiver of any of the environmental health rules in this subchapter. Child care programs will submit a written plan to CCL describing an alternative approach with respect to the rule from which they are seeking a waiver, and how this approach supports child and staff health and safety.

AUTH: 52-2-735, MCA
IMP: 52-2-735, MCA

NEW RULE XLV SMOKE-FREE ENVIRONMENT (1) All child care programs must provide and ensure a smoke-free and tobacco-free environment for children, ensuring there will be no smoking or use of vapor, tobacco, or alternative nicotine products indoors during child care hours, or outdoors while children are outdoors.

AUTH: 52-2-704, 52-2-731, MCA
IMP: 52-2-704, 52-2-731, MCA

NEW RULE XLVI OUTDOOR AIR QUALITY (1) All child care programs must reference the guidelines in ARM 37.111.827 to determine local air quality conditions and whether to cancel outdoor activities.

AUTH: 52-2-704, 52-2-731, MCA
IMP: 52-2-704, 52-2-731, MCA

NEW RULE XLVII INDOOR AIR QUALITY (1) Centralized ventilation systems and air filters in child care facilities must be properly maintained.

(2) Child care programs serving 16 or more children must ensure that the temperature is maintained at a minimum of 65°F in the areas used for child care.

AUTH: 52-2-704, 52-2-731, MCA
IMP: 52-2-704, 52-2-731, MCA

NEW RULE XLVIII HAND HYGIENE (1) Staff, volunteers, and children in all child care programs must learn and follow good handwashing practices at the following times:

(a) before and after:

(i) preparing or handling food or beverages, eating, or feeding a child;

(ii) giving medication or applying a medical ointment or cream; and

(iii) diapering;

(b) after:

(i) using the toilet or helping a child use a toilet;

(ii) handling bodily fluid (mucous, blood, vomit) from sneezing, wiping and blowing noses, or from mouths or from sores;

(iii) handling animals or cleaning up animal waste;

(iv) cleaning or handling the garbage; and

(v) applying sunscreen and/or insect repellent.

(2) All licensed child care programs must post handwashing signs in all food preparation, hand washing, diapering, and toileting areas.

(3) All licensed child care programs must provide soap and disposable or single-use towels or other hand-drying devices at all hand washing sinks. Common-use cloth towels are prohibited.

AUTH: 52-2-704, 52-2-735, MCA
IMP: 52-2-704, 52-2-735, MCA

NEW RULE XLIX BATHROOM HYGIENE (1) Child care programs with 16 or more children must provide lavatories (sinks), water closets (toilets), and urinals in the ratio of the number of each to the number of individuals using them, including children, staff, and volunteers, as follows:

(a) lavatories (sinks): 1:15;

(b) water closets (toilets): 1:15; and

(c) for urinals, substitute half of the number of toilets required, if over 20 males.

(2) All child care programs must provide toilet tissue next to all toilets.

(3) Hand sinks in all child care programs must have water at a temperature of at least 100°F and not more than 120°F.

(4) In child care programs where toothbrushing is an activity, toothbrushes must be managed in a way that avoids contamination.

AUTH: 52-2-704, 52-2-735, MCA

IMP: 52-2-704, 52-2-735, MCA

NEW RULE L SOLID WASTE MANAGEMENT (1) All child care programs must ensure that solid waste is safely stored and disposed of.

(a) Store all solid waste between removals in containers which have lids and are corrosion resistant, fly-tight, watertight, and rodent-proof.

(b) Clean all solid waste containers frequently.

(c) Store solid waste containers in a way that prevents the containers from being tipped, protects them from deterioration, and allows easy cleaning below and around them.

(d) Remove solid waste at least weekly.

AUTH: 52-2-704, 52-2-731, MCA
IMP: 52-2-704, 52-2-731, MCA

NEW RULE LI LAUNDRY AND CLOTHING (1) All child care programs must ensure that children's wet or soiled clothing is changed promptly. Programs must have a supply of spare clothing to allow at least one change per day. Soiled clothing must be placed in a sealed bag and returned to the parent or guardian.

(2) Child care programs must ensure that soiled laundry does not endanger the health of children by:

(a) refraining from storing soiled laundry in a dining, food preparation, or food storage room;

(b) ensuring soiled laundry is not accessible to children;

(c) providing sufficient space for sorting and storing clean and soiled laundry so clean and soiled laundry do not contact the same surface or each other; and

(d) laundering bedding whenever it is soiled.

(3) Child care center staff working with infants must ensure clothing worn to and from work is covered by or replaced with a clean, comfortable, nonirritating, and washable smock or similar clothing.

AUTH: 52-2-704, 52-2-731, MCA
IMP: 52-2-704, 52-2-731, MCA

NEW RULE LII SANITATION (1) All child care programs must:

(a) provide sanitary drinking facilities for each child;

(b) clean and sanitize their toys routinely. Toys must be cleaned and sanitized in a solution containing one tablespoon of unscented household bleach to one gallon of water, and then either washed through the sanitizing cycle of the dish washer, or rinsed with clean hot water, and then air dried;

(c) use cleaning products in accordance with the manufacturer's instructions;

(d) keep cleaning devices for toilets, urinals, sinks, and tubs separate from each other, and do not use such cleaning devices for any other purpose; and

(e) store cleaning compounds, pesticides, and cleaning devices for toilet bowls, toilet seats, or urinals separately and out of the reach of children. Cleaning compounds must be disposed of in accordance with the manufacturer's instructions.

AUTH: 52-2-735, MCA
IMP: 52-2-735, MCA

NEW RULE LIII DIAPERING (1) All licensed child care programs that care for children requiring diapers must:

(a) provide an adequate and cleanable area for diaper changing separate from food preparation and play areas;

(b) ensure diapering and toileting areas contain a wash basin that is separate from that used for food preparation;

(c) have available a sufficient supply of clean, dry diapers, and change diapers as frequently as needed. Disposable diapers, a commercial diaper service, or reusable cloth diapers supplied by the child's family may be used;

(d) use soft, absorbent, disposable towels, or clean reusable towels which have been laundered between each use for cleaning the child;

(e) keep safety pins out of reach of children;

(f) not leave children being diapered unattended on a surface from which they might fall;

(g) specifically label all toilet articles for each child. Each item must be separated and kept in a sanitary condition;

(h) clean surfaces after each diapering and change the pad or disposable sheeting (if used). Sanitize surfaces using a solution of one tablespoon of unscented household bleach to one gallon of water, rinse with clean water, and air dry;

(i) store soiled disposable diapers in easily cleanable or lined receptacles with tight-fitting lids in an area inaccessible to children; and empty, clean, and wash the receptacles once per day or more often as needed. Soiled disposable diapers must be disposed of immediately into an outside trash disposal or discarded indoors in a way that is inaccessible to children until outside disposal is possible;

(j) place soiled reusable cloth diapers in a labeled container with a tight-fitting lid provided by a commercial diaper service, or in a sealed waterproof bag or container for removal from the facility by an individual child's family. Soiled cloth diapers should be sent home with the child at the end of each day. The containers or sealed diaper bags of soiled cloth diapers should not be accessible to any child; and

(k) ensure the hands of the diapered child are washed.

(2) Toilet training must only be initiated when the child is ready and in consultation with the child's parents or guardian. There must not be a routine attempt to toilet train children under 18 months old.

AUTH: 52-2-735, MCA
IMP: 52-2-735, MCA

NEW RULE LIV BATHING (1) If bathing is necessary, licensed child care programs must:

(a) directly supervise children when being bathed;

(b) sanitize bathing materials after bathing each child;

(c) use nonallergenic soap; and

(d) make sure children cannot turn on hot water while being bathed. Water supply to bathing area must not exceed 120°F.

(2) Bathing facilities must be separate from food service, food preparation, and play or sleeping areas.

AUTH: 52-2-704, 52-2-735, MCA
IMP: 52-2-704, 52-2-735, MCA

NEW RULE LV WATER SUPPLY SYSTEM (1) All child care facilities must provide an adequate and potable supply of water that is connected to a public water supply system in accordance with 75-6-102, MCA.

(2) If the child care facility uses a nonpublic water system source, the program must:

(a) have the water source tested prior to operation and at least once each January and once each June for the total coliform bacteria and fecal coliform or E. coli bacteria;

(b) provide laboratory test results to the department as part of the licensing and registration or license/registration renewal process; and

(c) take corrective action as needed to ensure the water is safe to drink.

(3) Prior to operation, the water source of all child care facilities must be tested to determine that the maximum contamination levels for nitrate (10 milligrams per liter) and nitrite (1 milligram per liter) are not exceeded, and documentation of testing must be retained on the premises for 24 months from the date of the test.

AUTH: 52-2-704, 52-2-735, MCA
IMP: 52-2-704, 52-2-735, MCA

NEW RULE LVI SEWAGE SYSTEM (1) All child care facilities must have an adequate and safe sewage system.

(2) The child care facility must:

(a) be connected to a public sewage system in accordance with 75-6-102, MCA; or

(b) if a nonpublic system is used, retain documentation that it has complied with sewage disposal requirements adopted by the local board of health in the jurisdiction in which the child care facility is located as well as documentation of any necessary sewage system repairs or replacement.

AUTH: 52-2-704, 52-2-735, MCA
IMP: 52-2-704, 52-2-735, MCA

NEW RULE LVII SWIMMING POOL SANITATION (1) All licensed child care programs must allow children to only use swimming pools that are maintained in accordance with ARM 37.115.102, 37.115.103, and 37.115.106.

(2) Licensed child care programs using a portable wading pool must add one tablespoon household bleach to 100 gallons of water to the pool on the day of use, drain, clean, and refill it with fresh water daily and as otherwise needed. Bleach must be added any time the pool is refilled.

AUTH: 52-2-735, MCA
IMP: 52-2-735, MCA

NEW RULE LVIII FOOD PREPARATION AND HANDLING (1) At a minimum, all licensed child care programs must:

(a) cook food to the proper temperatures:

(i) chicken, poultry, stuffed foods, and leftovers to 165°F;

(ii) ground meats (including fish, e.g., fish sticks) to 155°F;

(iii) eggs, whole cuts of pork and fish to 145°F; and

(iv) vegetables and fruits for hot holding to 135°F;

(b) hold hot food prior to serving and after cooking at 135°F or hotter;

(c) keep cold food at or below 41°F;

(d) use milk and other dairy products that are pasteurized;

(e) require that hands be properly washed, and single use gloves, tongs, single use napkins, utensils, or deli tissues be used to handle food; and

(f) ensure no people with open wounds, respiratory diseases, or other communicable diseases handle food or food utensils.

(2) Child care programs serving 16 or more children must at a minimum:

(a) obtain food from sources that comply with the Montana Food, Drug and Cosmetic Act, Title 50, chapter 31, MCA, and not use home canned foods;

(b) dispose of food that has been in family-style service containers, on the table, or in the service area after the meal; and

(c) manage food that is not served family-style in the following way:

(i) cool food and place in the refrigerator within two hours of the meal; and

(ii) reheat food to 165°F within one hour prior to meal service and do not mix with new batches of food.

(3) All licensed child care programs must ensure that a probe type thermometer is available in the facility to check food temperatures and that the thermometer is calibrated and used following the manufacturer's guidelines.

(4) If using a domestic style dishwasher, all licensed child care programs must use the heat option to dry the dishes.

(a) At least a two-compartment sink must be provided as a backup facility in the event the dishwasher becomes inoperable in child care programs serving 16 or more children.

(5) If any licensed child care program with 16 or more children uses a two-compartment sink to hand-wash dishes, the program must use the wash, rinse, and sanitize three-step process:

(a) All dishware, utensils, and food service equipment are thoroughly cleaned in the first sink compartment with a hot detergent solution, at a concentration indicated on the manufacturer's label, then rinsed with clear water separately, and then a dipped/soaked in sanitizer solution in a separate compartment or container that will provide the equivalent bactericidal effect of a solution containing at least 50 ppm of available chlorine at a temperature of at least 75°F for one minute. Dishes must be air dried before being stored.

AUTH: 52-2-704, 52-2-735, MCA
IMP: 52-2-704, 52-2-735, MCA

NEW RULE LIX NUTRITION AND FOOD SERVICE DEFINITIONS (1) "CACFP" means the Child and Adult Care Food Program as designated in section 17 of the National School Lunch Act as amended (codified at 42 USC 1766 and effective as of December 13, 2010).

(2) "Nutritious meals and snacks" means quality and quantity of food that meets the USDA CACFP guidelines in 7 CFR 226.20 as of February 7, 2022.

(3) "USDA" means the United States Department of Agriculture.

AUTH: 52-2-704, 53-4-212, MCA
IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-2-201, 53-4-211, 53-4-212, 53-4-611, MCA

NEW RULE LX NUTRITION REQUIREMENTS (1) All licensed child care programs must:

(a) provide nutritious meals and snacks to children in such quality and quantity to meet the USDA CACFP recommended dietary allowances for children of each age or have a policy stating that parents/guardians are required to send food for meals and/or snacks;

(b) serve meals and snacks at standard times, to ensure that:

(i) children in care for five to ten daytime hours are offered at least one meal and two snacks or two meals and one snack. Children must be offered a midmorning snack if they are not offered breakfast at the child care program less than 2 1/2 hours before lunch;

(ii) children in care for a continuous period of ten hours or more must be provided at least one meal every six hours and one snack between meals. The six-hours requirement does not apply during the hours that the child is sleeping when night care is provided;

(iii) children receiving night care are offered dinner and/or breakfast, and a bedtime snack; and

(iv) children in care for fewer than five hours are offered one snack every 2 1/2 hours;

(c) for each child with nutritional therapeutic needs, request and carefully follow written special dietary instructions from either the child's parent or guardian or a health care provider. Food brought from home for special dietary purposes must be carefully labeled with the child's name;

(d) plan menus in advance, post menus for parents/guardians, and serve meals and snacks in accordance with the planned menus;

(e) supervise children if they prepare food and while they eat;

(f) ensure that drinking water is freely available and offered at regular intervals to all children; and

(g) retain written menu records and any special dietary instructions.

AUTH: 52-2-704, 52-2-735, MCA
IMP: 52-2-702, 52-2-704, 52-2-723, 52-2-731, 52-2-735, MCA

NEW RULE LXI INFANT FEEDING (1) All child care programs must provide an individualized diet and feeding schedule according to a written plan submitted by the parents/guardians. A change of diet and schedule must be noted on each infant's daily diet and feeding schedule.

(a) Child care programs caring for 16 or more children must post each infant's diet and schedule in an area clearly visible to the center's infant care staff.

(2) A day's supply of breast milk in nursing bottles or formula must:

(a) require no more preparation than dilution with water and must be provided by the parents/guardians, unless an alternative agreement is reached between the parents/guardians and child care provider that ensures the infant's nutritional needs are sufficiently met; and

(b) be clearly labeled with each infant's name and date and be immediately refrigerated.

(3) Special dietary foods that infants require must be prepared by the parents/guardians.

(4) Bottles must be prepared in a sanitary food preparation sink or other sink separated by at least six feet from diapering and bathroom areas.

(5) Bottles must not be propped. Children too young to sit in high chairs must be held in a semi-sitting position for all bottle feedings.

(a) Infants must not be allowed to lie on their backs when drinking from a bottle or spill-proof cup (sippy cup).

(b) Infants who show a preference for holding their own bottles may do so if the infant is still held for the bottle feeding and the infant remains in a semi-sitting or upright position.

(6) If the parent/guardian is unable to bring sufficient or usable formula or breast milk, the program may use commercially prepared and packaged formula.

(7) Children must be provided suitable foods which encourage freedom in self-feeding.

(8) Bottles must be refrigerated immediately if not used and contents discarded if not used within 24 hours.

(9) Bottles and nipples must be cleaned and sanitized using generally accepted means of sanitation.

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-731, MCA

NEW RULE LXII FOOD SERVICE EQUIPMENT (1) All child care programs must provide one age-appropriate feeding equipment for every four infants or toddlers. This includes safe high chairs, baby feeding tables, booster seats, and child-size tables and chairs. These types of equipment must be used in accordance with the manufacturer's instructions.

(2) Portable high chairs that hook onto tables are not allowed in any licensed child care program.

AUTH: 52-2-704, MCA

IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-724, 52-2-731, MCA

NEW RULE LXIII IMMUNIZATION DEFINITIONS (1) "ACIP" means the Advisory Committee on Immunization Practices, which provides advice to the U.S. Centers for Disease Control and Prevention on routine administration of vaccines to pediatric and adult populations.

(2) "Adequate documentation" means documentation which meets the specifications set forth in [NEW RULE LXVI].

(3) "CLIA" means the federal clinical laboratory improvement amendments of 1988.

(4) "Conditional attendance" means that children are allowed to attend child care on a conditional basis until they meet the requirements of an established vaccination schedule.

(5) "Conditional Attendance Form (HES 103)" means the form used by parents or guardians and health care providers to allow children to attend child care on a conditional basis until they meet vaccination requirements on a set schedule.

(6) "DT vaccine" means a vaccine containing a combination of diphtheria and tetanus toxoids.

(7) "DTP vaccine" and "DTAP vaccine" mean vaccines containing diphtheria and tetanus toxoids and pertussis (whooping cough) vaccine combined, including a vaccine referred to as DTaP, diphtheria, tetanus toxoid, and acellular pertussis vaccine combined.

(8) "Hep B vaccine" means a vaccine containing Hepatitis B vaccine.

(9) "Hib vaccine" means a vaccine immunizing against infection by Haemophilus influenza type B disease.

(10) "Immunization information system" means a confidential, computerized, population-based system managed and maintained by the department that collects and consolidates vaccination data from vaccine providers.

(11) "Medical exemption" means a vaccination exemption from a health care provider indicating that the physical condition of the child is such that one or more vaccinations would endanger their life or health or is medically contraindicated.

(12) "Medical Exemption Statement Form (HES 101A)" means the form provided by the department to document a medical exemption(s) from one or more vaccinations.

(13) "MMR vaccine" means a vaccine containing a combination of measles, mumps, and rubella vaccine.

(14) "Montana Certificate of Immunization Form (HES 101)" means the form provided by the department to consolidate immunization history.

(15) "MR vaccine" means a vaccine containing a combination of measles and rubella vaccines.

(16) "Official vaccination record" means a standard electronic or paper record that is maintained by the department, by another state's principal health agency, or by a healthcare provider to record the vaccination status of a child, and includes the following:

(a) child's legal name;

(b) birthdate;

(c) sex; and

(d) vaccination date (month, day, and year) by vaccine type, or, in the case of a postsecondary record, the month and year of vaccine administration.

(17) "PCV vaccine" means a vaccine containing pneumococcal conjugate vaccine.

(18) "Polio vaccine" means a trivalent polio vaccine.

(19) "Religious exemption" means a vaccination exemption based on an affidavit of exemption on religious grounds attesting that receipt of a vaccine or vaccines is contrary to an individual's religious belief, observance, or practice.

(20) "Religious exemption form" means a notarized affidavit of exemption on religious grounds from vaccine administration.

(21) "Td vaccine" means a vaccine containing tetanus and diphtheria toxoids.

(22) "Tdap vaccine" means a vaccine containing tetanus and diphtheria toxoids, and acellular pertussis.

(23) "Vaccine" means:

(a) if administered in the United States, an immunizing agent recommended by ACIP and licensed by the U.S. Food and Drug Administration; or

(b) if administered outside of the United States, an immunizing agent administered by a person licensed to practice medicine in the country where it is administered or by an agent of the principal public health agency of that country and properly documented as required by ARM 37.114.708.

(24) "Varicella vaccine" means an attenuated, live virus vaccine to prevent chicken pox disease.

AUTH: 52-2-704, 52-2-735, 53-4-212, MCA
IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-2-201, 53-4-211, 53-4-212, 53-4-611, MCA

NEW RULE LXIV MINIMUM CHILD IMMUNIZATION REQUIREMENTS

(1) Children attending Montana child care programs are required to be vaccinated against certain diseases. Minimum child immunization requirements apply to children in all child care programs with exceptions described in [NEW RULE LXV]. Before a child may attend any Montana child care program, a program must be provided with documentation that the child has been immunized, as required for the child's age group, against measles, rubella, mumps, poliomyelitis, diphtheria, pertussis (whooping cough), tetanus, varicella, hepatitis B, pneumococcal disease (pneumonia), and Haemophilus influenza type B, unless the child qualifies for conditional attendance in accordance with (5) or has a medical or religious exemption:

Age at Entry	Number of Doses – Vaccine Type
under 2 months old	no vaccinations required
by 3 months old	1 dose of polio vaccine 1 dose of DTP vaccine 1 dose of Hib vaccine

	1 dose of Hep B vaccine 1 dose of PCV vaccine
by 5 months old	2 doses of polio vaccine 2 doses of DTP vaccine 2 doses of Hib vaccine 2 doses of Hep B vaccine 2 doses of PCV vaccine
by 7 months old	2 doses of polio vaccine 3 doses of DTP vaccine 2 or 3 doses of Hib vaccine* 2 doses of Hep B vaccine 3 doses of PCV vaccine
by 16 months old	2 doses of polio vaccine 3 doses of DTP vaccine 1 dose of varicella vaccine 1 dose of MMR vaccine 3 or 4 doses of Hib vaccine* 2 doses of Hep B vaccine 4 doses of PCV vaccine*
by 19 months old	1 dose of varicella vaccine 3 doses of polio vaccine 4 doses of DTP vaccine 1 dose of MMR vaccine 3 or 4 doses of Hib vaccine* 3 doses of Hep B vaccine 4 doses of PCV vaccine*
by 6 years old	3 doses of polio vaccine, one given after the 4th birthday 4 doses of DTP vaccine, one given after the 4th birthday 2 doses of varicella vaccine 2 doses of MMR vaccine 3 doses of Hep B vaccine
by 12 years old	3 doses of polio vaccine, one given after the 4th birthday 1 dose of Tdap vaccine 2 doses of varicella vaccine 2 doses of MMR vaccine 3 doses of Hep B vaccine

(*) varies depending on vaccine type used or the ACIP catch-up schedule.

(2) Hib and PCV vaccines are not required or recommended for children five years old and older.

(3) Doses of MMR and varicella vaccines, to be acceptable under this rule, must be given no earlier than 12 months old, and a child who received a dose prior to 12 months old must be revaccinated; however, vaccine doses given up to four days before the minimum interval or age are counted as valid. Live vaccines not administered at the same visit must be separated by at least four weeks.

(4) Vaccines immunizing against diphtheria, pertussis, and tetanus must be administered as follows:

(a) a child less than seven years old must be administered four or more doses of DTP or DTaP vaccine, at least one dose of which must be given after the fourth birthday;

(b) DT vaccine administered to a child less than seven years old is acceptable for purposes of this rule only if accompanied by a medical or religious exemption exempting the child from pertussis vaccination; and

(c) a child seven years old or older who has not completed the requirement in (1) must receive additional doses of Tdap vaccine or Td vaccine to become current in accordance with the ACIP schedule.

(5) A child may initially conditionally attend a child care program if:

(a) the child has received at least one dose of each of the vaccines required for the child's age;

(b) documentation of the child's conditional immunization status is on file at the child care program; and

(c) the child is not past due for the next required dose (as noted on the conditional enrollment form) of the vaccine in question.

(6) Children attending licensed out-of-school-time programs serving only school-age children must meet the minimum student immunization requirements defined in ARM 37.114.702 and 20-5-403, MCA.

(7) Children in a sibling group receiving FFN care in their home are not subject to the immunization requirements, provided that there are no unrelated children also receiving care.

(8) Children receiving care through RCE providers are not subject to vaccination requirements.

AUTH: 52-2-704, 52-2-735, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-735, MCA

<u>NEW RULE LXV EXEMPTIONS FROM VACCINATION</u> (1) A child is exempt from receiving the required vaccinations when the requirements of any of the following are met:

(a) Medical exemption: A child is not required to have any vaccinations which are medically contraindicated. A written and signed statement from a health care provider that a vaccination otherwise required by [NEW RULE LXIV] is medically contraindicated will exempt a child from those vaccination requirements as deemed necessary by the health care provider. It is preferred, but not mandatory, that a health care provider's medical exemption be recorded on HES-101A. Medical exemption documentation must include:

(i) which specific vaccination is contraindicated;

(ii) the period of time during which the vaccination is contraindicated;

(iii) the reasons for the medical contraindication; and

(iv) when deemed necessary by a health care provider, the results of immunity testing. The tests must indicate serological evidence of immunity and must be performed by a CLIA approved lab.

(b) Religious exemption: A child seeking to attend a child care program is not required to be vaccinated if the child's parent or guardian attests that vaccination is contrary to their religious belief, observance, or practice. An exemption on religious grounds must be notarized and maintained on an Affidavit of Exemption on Religious Grounds Form (HES-113) prescribed by the department.

(i) A certificate of religious exemption is required only for the required vaccines listed in [NEW RULE LXIV].

(c) A child experiencing homelessness or a child in foster care is exempt from required vaccinations outlined in [NEW RULE LXIV(1)] for a 30-day grace period beginning the first day the child attends a child care program as verified on the sign-in/sign-out records.

(i) The child experiencing homelessness must meet the definition in 42 U.S.C. 11434a (2).

(ii) A child is in foster care when the foster care environment meets ARM 37.50.101(4).

(iii) A child must meet the vaccination requirement for conditional enrollment outlined in [NEW RULE LXIV(6)] before the end of the 30-day period.

(iv) A child may not be granted consecutive grace periods.

(2) Family child care programs, group child care programs, and FFN providers may choose whether to enroll children who are not vaccinated according to the minimum immunization schedule included in [NEW RULE LXIV(1)]. These providers must have written policies and procedures to notify the parents and legal guardians of prospective and enrolled children of this choice.

(a) These policies will be made publicly available to families prior to enrolling their children with a specific provider.

(b) Policies must also be submitted to CCL and will be used to create an online list of providers by policy type.

(3) Out-of-school-time programs serving only school-age children must accept public school vaccination exemptions, including medical exemption statements from ARM 37.114.715 and religious exemptions defined in ARM 37.114.716.

AUTH: 52-2-704, 52-2-735, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-735, MCA

NEW RULE LXVI REQUIREMENTS FOR ADEQUATE DOCUMENTATION OF IMMUNIZATION STATUS (1) All child care programs must have received completed immunization documentation, in accordance with this rule, before any child can be enrolled or entered into a child care program. The child care program must maintain a record of immunization status for each enrolled child, and any child of a staff member who resides at the child care facility, with respect only to the vaccines, number of doses, and timing set forth in [NEW RULE LXIV]. The program

must make those records available during normal working hours to representatives of the department or the local health authority.

(2) The following are considered adequate documentation of vaccination for the purposes of this subchapter:

(a) a record from any local health department in the United States, signed by a local health officer or nurse;

(b) a certificate signed by a local health officer or nurse;

(c) any official immunization record, if information has been recorded and signed by a physician, physician's designee, local health officer, or that officer's designee; or an official report from the statewide immunization information system, or a health care provider's medical record system;

(d) immunization recorded on a form approved by the U.S. government;

(e) any state's official parent-maintained immunization record;

(f) an international certificate of vaccination on a form approved by the World Health Organization; or

(g) in the case of a vaccine administrated outside of the United States, a record of the vaccination signed by an official of the principal public health agency of the country where the vaccination occurred.

(3) Vaccine administration data may not be filled out by a parent, guardian, or other person unless they are a health care provider, health department official, or person otherwise authorized to do so by this subchapter.

(4) The following are considered adequate documentation in lieu of receiving required vaccines:

(a) the conditional enrollment form prescribed by the department;

(b) a medical exemption;

(c) a religious exemption; or

(d) documentation of immunity from varicella, measles, mumps, or rubella by laboratory evidence or diagnosis/verification of disease by physician, nurse practitioner, or physician's assistant. The tests must indicate serological evidence of immunity and must be performed by a CLIA-certified lab. A copy of the test results must be attached to the child's official immunization record.

(5) Parents or legal guardians of students attending public school must provide a written parental statement that the required immunization is on file with the child's school. Parents/guardians of these students do not have to provide other immunization documentation to out-of-school-time programs.

(6) Students in out-of-school-time programs not attending public school must provide immunization documentation aligned with ARM 37.114.703.

AUTH: 20-5-407, 52-2-704, 52-2-735, MCA
IMP: 20-5-402, 52-2-704, 52-2-723, 52-2-731, 52-2-735, MCA

NEW RULE LXVII EXAMINATION AND AUDIT OF OFFICIAL CHILD IMMUNIZATION RECORDS (1) The department and local health authority representatives have the right to audit and verify child vaccination records maintained by child care programs to determine compliance with vaccination requirements.

AUTH: 52-2-704, 52-2-735, MCA
IMP: 52-2-704, 52-2-732, 52-2-733, 52-2-735, MCA

NEW RULE LXVIII IMMUNIZATION STATUS AS CONDITION OF ATTENDANCE (1) In order to continue to attend a child care program, a child must continue to be vaccinated on the schedule described in [NEW RULE LXIV(1)] and must be immediately excluded from attendance if the child:

(a) is not vaccinated on that schedule with all of the required vaccines;

(b) does not have on file at the child care program a record of medical exemption, religious exemption, a conditional enrollment form which indicates that no vaccine dose is past due; or

(c) does not meet the exemption for a child experiencing homelessness or a child in the foster system.

AUTH: 52-2-704, 52-2-735, MCA
IMP: 52-2-704, 52-2-735, MCA

NEW RULE LXIX QUALIFICATIONS AND TRAINING DEFINITIONS

(1) "Assistant teacher" means a program staff member who carries out assigned caregiving and teaching tasks under the guidance and oversight of a lead teacher or program director.

(2) "Director" or "owner" means the person designated as the person responsible for the daily operation of a child care program. A director is also responsible for implementing appropriate child development principles and knowledge of family relationships in providing daily care to the children cared for in the facility. FFN providers are not required to designate a director.

(3) "Lead teacher" means the lead staff person in charge of a child or group of children who implements program activities.

(4) "On-the-job training" is training provided by the director or designee, during business hours, to educate new staff members on facility and program-specific policies, procedures, and department requirements pertaining to their role.

(5) "Orientation training" means initial required training to educate new staff.

(6) "Practitioner Registry" is a statewide registry that is used to help develop and track a knowledgeable and skilled child care workforce based on an individual's verified professional achievements.

(7) "Professional training" means training for child care staff that is recognized as professional development by a national education or certification organization or by a higher education institution.

(8) "Site director" means the person who plans and implements program services at one site of a multi-site program under the oversight of the director.

(9) "Staff" refers to all persons who work or substitute in a child care program and count in the child-to-staff ratio during hours when children are or may be present, excluding licensees or registration holders.

(10) "Substitute" means any person not regularly employed by a child care program who temporarily takes the place of an approved staff person, other than the director.

(11) "Support staff" means a staff member of a child care program who does not participate in a direct caregiving role and is not counted in child-to-staff ratios. Examples of support staff would be cooks, administrative staff, or cleaning staff.

(12) "Trainee" means a staff member who has been approved to work in a child care program based on initial criteria but has not yet completed required training.

AUTH: 52-2-704, 53-4-212, MCA
IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-2-201, 53-4-211, 53-4-212, 53-4-611, MCA

NEW RULE LXX PROGRAM STAFFING (1) Programs differ in size and structure and the following definitions and responsibilities may not apply to all programs.

(2) Only directors, site directors, lead teachers, assistant teachers, trainees, and substitutes may provide direct child care and count in child-to-staff ratios.

(3) FFN providers are considered a director or owner.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE LXXI DIRECTOR OR OWNER RESPONSIBILITIES AND QUALIFICATIONS (1) A director or owner and their program staff are responsible for the health, safety, supervision, protection, and guidance of the children in care. The director or owner is responsible for operating the child care program at all times.

(2) A director or owner must demonstrate knowledge and ability to carry out day-to-day operations and is responsible for being on-site at the program, unless there is a site director, designated staff member, or substitute filling the on-site role.

(3) Directors or owners must meet the following qualifications:

(a) be at least 18 years old;

(b) meet background check requirements set forth in [NEW RULE LXXXIII];

(c) be current on the Practitioner Registry;

(d) have current CPR and pediatric first aid certification;

(e) successfully complete required orientation training; and

(f) have a combination of education, training, or experience in working with children to demonstrate an ability to fulfill the director responsibilities for the licensed program type, subject to department approval.

(5) If the director or owner will be absent from the program for more than 30 continuous days, the director must notify the department in writing of the individual who has been appointed as the designee. The appointed designee must meet all the requirements of this rule.

(6) The director or owner must ensure compliance with all applicable administrative rules within this chapter.

(7) The director, owner, or designee must review every incident or accident-causing injury to a child resulting in medical or dental care and document the appropriate corrective action taken to avoid a reoccurrence.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE LXXII SITE DIRECTOR RESPONSIBILITIES AND QUALIFICATIONS (1) Programs may employ site directors when they have multiple facilities in geographically dispersed locations. An individual may only serve as a site director at one location or site. Site directors plan and implement program services under the oversight of the director/owner.

(2) Site directors must meet the following qualifications:

(a) be at least 18 years old;

(b) meet background check requirements set forth in [NEW RULE LXXXIII];

(c) be current on the Practitioner Registry;

(d) have current CPR and pediatric first aid certification;

(e) successfully complete orientation training;

(f) complete on-the-job training; and

(g) have a combination of education, training, other licensing, or experience in working with children to demonstrate an ability to fulfill the site director responsibilities for the licensed program type, subject to department approval.

(3) The site director is responsible for being on-site during the program's operating hours and providing regular supervision and mentoring of lead teachers, assistant teachers, substitutes, support staff, and volunteers.

(4) One person may be the director and site director.

(5) The director absence requirements in [NEW RULE LXXI] apply to site directors.

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE LXXIII LEAD TEACHER RESPONSIBILITIES AND QUALIFICATIONS (1) Lead teachers are responsible for program activity planning and delivery.

(2) A lead teacher must:

(a) be at least 18 years old;

(b) meet background check requirements set forth in [NEW RULE LXXXIII];

(c) complete on-the-job training;

(d) be current on the Practitioner Registry;

(e) have current CPR and pediatric first aid certification;

(f) successfully complete required orientation training; and

(g) have a combination of education, training, other licensing, or experience in working with children to demonstrate an ability to fulfill the lead teacher responsibilities for the licensed program type, subject to department approval.

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE LXXIV ASSISTANT TEACHER RESPONSIBILITIES AND QUALIFICATIONS (1) Assistant teachers help a lead teacher provide instructional support to children and implement developmentally appropriate programming.

(2) Assistant teachers must:

(a) receive oversight and guidance from an onsite lead teacher, site director, or director;

(b) be at least 16 years old;

(c) meet background check requirements set forth in [NEW RULE LXXXIII];

(d) complete on-the-job training;

(e) be current on the Practitioner Registry;

(f) have current CPR and pediatric first aid certification; and

(g) successfully complete required orientation training.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE LXXV SUBSTITUTE RESPONSIBILITIES AND QUALIFICATIONS (1) Substitutes must:

(a) meet background check requirements set forth in [NEW RULE LXXXIII];

(b) meet the age requirement for the role for which they are substituting;

(c) complete on-the-job training;

(d) be current on the Practitioner Registry;

(e) have current CPR and pediatric first aid certification; and

(f) successfully complete required orientation training.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE LXXVI TRAINEE RESPONSIBILITIES AND QUALIFICATIONS

(1) Trainees must:

(a) meet background check requirements set forth in [NEW RULE LXXXIII];

(b) be at least 16 years old;

(c) not be left alone with children until they complete the required 30-day orientation training;

(d) receive oversight and guidance from an onsite lead teacher, site director, or director; and

(e) not remain in this role for longer than 90 days.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE LXXVII SUPPORT STAFF QUALIFICATIONS (1) Support staff who do not provide direct care for children must:

(a) meet background check requirements set forth in [NEW RULE LXXXIII]; and

(b) complete on-the-job training.

(2) Support staff do not count toward compliance with required child-to-staff ratios.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE LXXVIII VOLUNTEER QUALIFICATIONS (1) Volunteers may include a parent or guardian helping on a field trip, special guest presenters, or a parent or guardian, family member, or community member helping with a cultural celebration, or other activity. Volunteers:

(a) must be at least 15 years old;

(b) not count toward compliance with required child-to-staff ratios;

(c) must meet background check requirements set forth in [NEW RULE LXXXIII] if they will have unsupervised access to children; and

(d) are not required to undergo background checks if they work under the continuous supervision of a lead teacher, site director, or director.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE LXXIX ORIENTATION TRAINING (1) All staff and owners included in child-to-staff ratios must complete department-approved orientation training. Orientation training includes 30-day and 90-day training requirements.

(2) Within 30 days of hire and before providing unsupervised care to children, the following training is required:

(a) infant, child, and adult CPR, infant choking response, and pediatric first aid. CPR certification must be completed in a hands-on setting. Alternatively, staff can provide verification of current infant, child, and adult CPR, infant choking response, and pediatric first aid certification from the American Heart Association, American Red Cross, or other CCL-approved entity;

(b) if the child care license permits care for children under 12 months old, prevention of sudden infant death syndrome and use of safe sleep practices; and

(c) if the child care license permits care for children under 36 months old, prevention of shaken baby syndrome and abusive head trauma.

(d) The staff and owners of child care programs providing care exclusively to school-age children are not required to take infant CPR, infant choking response, sudden infant death syndrome, safe sleep, and shaken baby syndrome training.

(3) Within 90 days of hire, the following orientation training is required:

(a) prevention and control of infectious diseases, including immunization;

(b) child development;

(c) administration of medication, consistent with standards for parental/guardian consent;

(d) prevention and response to emergencies due to food and allergic reactions;

(e) building and physical premises safety;

(f) emergency preparedness and response;

(g) proper handling, storage, and disposal of hazardous materials;

(h) appropriate disposal of toxic (bio-contaminants) materials including blood, bodily fluids, and other infectious materials;

(i) transportation; and

(j) prevention and mandatory reporting of child abuse and neglect to proper state authorities.

(4) Orientation training will be counted toward annual training requirements.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE LXXX ANNUAL TRAINING (1) All staff and owners working more than 500 hours annually at any child care program must successfully complete required annual training.

(a) Staff and owners of licensed child care centers, group child care homes, and/or family child care homes must complete 16 hours of annual training.

(b) Staff and owners of licensed out-of-school-time, registered FFN, or registered RCE programs must complete eight hours of annual training.

(2) The training must be approved through the Practitioner Registry.

(3) Education and training must relate to the Montana Early Care and Education Knowledge Base.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE LXXXI HEALTH AND SAFETY REFRESHER COURSE (1) All staff required to complete orientation training, including RCE and FFN providers, must complete a department-approved health and safety refresher course at least every three years. The health and safety review course will count toward the annual training required in [NEW RULE LXXX].

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE LXXXII BACKGROUND CHECK DEFINITIONS (1) "May deny crime" means a crime that gives the department the ability to determine that a background check result is unsatisfactory and an individual is not eligible to work or be present in a child care facility.

(2) "Must deny crime" means a crime that requires the department to determine that a background check result is unsatisfactory and an individual is not eligible to work or be present in a child care facility.

(3) "Satisfactory results of background checks" means that the results do not include any conviction or pending charge that is a must deny or may deny crime or offense that the department has determined makes an individual ineligible to work in a child care program.

(4) "Unsatisfactory results of background checks" means that the results include a conviction or pending charge that is a must deny or may deny crime or offense.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-726, 52-2-731, MCA

NEW RULE LXXXIII FINGERPRINT AND BACKGROUND CHECKS (1) The following individuals must provide satisfactory results of background checks prior to approval of any license or registration, or staff approval:

(a) child care directors, owners, site directors, lead teachers, assistant teachers, substitutes, trainees, support staff, and volunteers who have unsupervised contact with children; and

(b) any adult residing in the child care facility, or other adult who regularly or frequently stays in the facility, unless care is being provided in the home of a child or children who belong to the same sibling group.

(i) In the case of a FFN provider caring for children from more than one sibling group in a child's home, all adults residing in the home must have satisfactory results of a background check.

(2) The following background checks are required prior to working in a child care facility and annually thereafter, with the exception of a fingerprint background check, which is required every five years:

(a) a fingerprint background check by the Montana Department of Justice (DOJ) and Federal Bureau of Investigation;

(i) fingerprints must be processed by a trained individual within a certified fingerprinting agency. Results will be transmitted electronically to the department by DOJ;

(b) a check of the Montana Sex Offender Registry and the national Sexual Offender Registry from the National Criminal Information Center (NCIC);

(c) a child protective services check for Montana and any state where the individual has resided in the preceding five years; and

(d) a name-based criminal records check for Montana and any state where the individual has resided in the preceding five years.

AUTH: 52-2-704, MCA
IMP: 52-2-703, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, MCA

NEW RULE LXXXIV BACKGROUND CHECK RESULTS THAT MUST RESULT IN THE DENIAL OF AN APPLICANT (1) After written notice to the applicant or licensee, the department must deny, suspend, restrict, revoke, or reduce to a provisional or probationary status a license upon finding that any person requiring a background check has been convicted of a crime that must make an individual ineligible to work in a child care facility. These crimes are felonies and misdemeanors that are direct crimes against a person's physical or emotional well-being. Convictions for the following crimes must make an individual ineligible to work or be present in a child care facility:

(a) a serious crime, such as homicide, sexual intercourse without consent, sexual assault, aggravated assault, assault on a minor, assault on an officer, assault with a weapon, kidnapping, aggravated kidnapping, robbery, or arson;

(b) a crime pertaining to children or families, including child abuse or neglect, incest, child sexual abuse, ritual abuse of a minor, felony partner or family member assault, misdemeanor partner/family member assault in which the victim is a minor, child pornography, child prostitution, internet crimes involving children, felony endangering the welfare of a child, felony unlawful transactions with children, or aggravated interference with parent-child contact;

(c) being named as the perpetrator in a substantiated report of abuse or neglect; or

(d) abuse, sexual abuse, neglect, or exploitation of an elderly person or a person with a developmental disability.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-726, 52-2-731, MCA

NEW RULE LXXXV BACKGROUND CHECK RESULTS THAT MAY RESULT IN THE DENIAL OF AN APPLICANT (1) After written notice to the applicant or licensee, the department may deny, suspend, restrict, revoke, or reduce to a provisional or probationary status a license upon finding that any person requiring a background check has been convicted of a crime that may make an individual ineligible to work in a child care facility. These crimes are misdemeanors that are direct crimes against a person's physical or emotional well-being. Convictions for the following crimes may make an individual ineligible to work or be present in a child care facility:

(a) a conviction for misdemeanor partner/family member assault, misdemeanor endangering the welfare of a child, misdemeanor unlawful transaction with children, prostitution, burglary, or a crime involving an abuse of the public trust;

(b) being named as a perpetrator in a founded report of abuse or neglect, although this cannot be the sole basis for denial; or

(c) a felony conviction for a drug-related offense within the previous five years, including distribution, or possession of controlled substances, criminal possession of precursors to dangerous drugs, criminal manufacture of dangerous drugs, criminal possession of imitation dangerous drugs with the purpose to distribute, criminal possession, manufacture or delivery of drug paraphernalia, or driving under the influence of alcohol or other drugs.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-726, 52-2-731, MCA

NEW RULE LXXXVI OFFENSES THAT ARE PENDING RESOLUTION (1) Any staff member, support staff, trainee, volunteer, or other adult residing in the child care facility, or other person who regularly or frequently stays in the facility, who is charged with a crime that must make them ineligible to work in a child care facility may not provide care or be present in the facility when children in care are on the premises pending the resolution of the charges.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE LXXXVII PROCESS TO REQUEST ADMINISTRATIVE RECONSIDERATION OF BACKGROUND CHECK RESULTS AND DEPARTMENT DETERMINATION (1) If a license has been denied to an applicant or negative licensing action is proposed against a license based upon a conviction identified in [NEW RULE LXXXIV] or [NEW RULE LXXXV], the provider applicant, licensee/owner, or staff member, support staff, trainee, or volunteer, collaboratively with the provider applicant or licensee/owner, may submit additional information to correct any inaccuracies or errors in the background check results.

(2) A staff member, support staff, trainee, or volunteer, collaboratively with the provider applicant or licensee/owner if these are not the same person, may request an administrative reconsideration of a denial based on a may-deny background check finding. The requester and provider applicant/licensee/owner must establish that the person has been sufficiently rehabilitated to warrant the public trust and not pose a risk to children. Senior department management will review the evidence, and if it finds the reconsideration warranted, the department may approve the applicant.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-726, 52-2-731, MCA

NEW RULE LXXXVIII COMPLAINTS AND INVESTIGATIONS (1) Any individual, group, or other agency may file a written complaint against a child care program or provider. The complainant's personal information is not public information.

(2) Any individual, group, or other agency may request that the department determine whether a child care facility should be licensed according to law. Referral may be either in writing or by telephone.

(3) An authorized representative of the department may inspect a program and associated facility and property without prior notice to the owner or staff of the program whenever the department considers it necessary, and any time children are in care.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 52-2-732, 52-2-733, MCA

NEW RULE LXXXIX LICENSING OR REGISTRATION CORRECTIVE ACTION (1) At the department's discretion, when a program is in violation of this chapter or Title 52, chapter 2, part 7, MCA, a corrective action plan may be required.

(2) The department's corrective action plan includes:

(a) a description of the violation and the rule or law that was violated;

(b) the date by which the violation must be corrected; and

(c) information about other licensing action that may be imposed if compliance does not occur by the required date.

(3) The provider must submit response within ten business days of receiving the corrected action plan, including a statement from the provider regarding the proposed plan to comply with the rule or law.

(4) The provider may submit additional information as to why the provider believes a deficiency did not occur.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-726, MCA

NEW RULE XC TIME PERIOD FOR CORRECTING A VIOLATION (1) The length of time a licensee has to make corrections will be determined by the department, which must consider:

(a) the seriousness of the violation;

(b) the potential threat to the health, safety, and well-being of the children in care; and

(c) the number of times the licensee has violated rules in this chapter or under Title 52, chapter 2, part 7, MCA.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-726, 52-2-731, MCA

NEW RULE XCI DENIAL, SUSPENSION, REVOCATION, OR MODIFICATION OF A LICENSE OR REGISTRATION (1) The department, after written notice to the applicant, licensee/owner, or exempt provider may deny, suspend, revoke, or modify a license or registration.

(a) The department may modify a license by restricting or reducing it to a provisional or probationary status.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-726, 52-2-731, MCA

NEW RULE XCII VIOLATIONS THAT MAY RESULT IN NEGATIVE LICENSING OR REGISTRATION ACTION (1) The department may deny, suspend, or revoke a license or registration, or take another action such as requiring an individual be excluded from a facility, when:

(a) the provider, any staff member, support staff, trainee, volunteer, or any person residing or staying in the child care facility on a frequent or regular basis has been named as the perpetrator in a substantiated report of abuse or neglect;

(b) the licensee, staff member, support staff, trainee, volunteer, or household members are disqualified under the child care licensing background check rules;

(c) the department requests and is denied access to the licensed or registered facility;

(d) the child care program has not met or is no longer meeting the requirements for licensure or registration set forth in these rules;

(e) the program has made any material misrepresentations to the department, either negligent or intentional, including an omission of information the

provider is obligated to disclose to the department, regarding any aspect of the child care program or facility or its operations;

(f) through a child care licensing investigation, it is determined that the provider, provider's staff, or member of the provider's household has violated a licensing regulation that has resulted in harm to a child which falls within the definitions of child abuse and neglect set out in 41-3-102, MCA, whether or not a criminal prosecution is initiated;

(g) upon referral of suspected child abuse or neglect regarding an operating child care facility, the initial investigation by the department, or by a law enforcement agency determines that there is probable cause to believe that a child in the facility may be in danger of harm;

(h) the provider or any staff member has failed to report an incident of suspected abuse or neglect of any child to the department as required by 41-3-201, MCA, within 24 hours of receiving information pertaining to the incident;

(i) the provider or any staff member, trainee, support staff, volunteer, or adult residing in the facility or staying in the facility may pose any risk or threat to the safety or welfare of a child in the child care program;

(j) the child care program has failed to protect the health, welfare, or safety of a child, or the child care program presents a reasonably foreseeable serious hazard to the health, safety, or welfare of a child;

(k) a staff member, trainee, support staff, volunteer, or adult residing in the facility or staying in the facility on a regular or frequent basis has violated a licensing regulation which resulted in harm to a child as defined in 41-3-102, MCA, or knowingly allowed harm to occur to a child as defined in 41-3-102, MCA, whether or not that person was prosecuted or convicted of child abuse or neglect; or

(l) the licensee's child is removed from the licensee by the Child and Family Services Division.

(2) Suspension or revocation may be immediate upon a determination by the department that public health, safety, or welfare imperatively requires emergency action.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-726, 52-2-731, MCA

NEW RULE XCIII NOTICE OF LICENSE OR REGISTRATION DENIAL, SUSPENSION, OR REVOCATION (1) The department must provide written notification to a licensee, registrant, or applicant of a denial, suspension, or revocation.

(2) The licensee, registrant, or applicant has the right to appeal the denial, suspension, revocation, or modification of a license or registration. The department notice will include information on hearing rights and how to request a hearing.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-726, MCA

NEW RULE XCIV ISSUING A PROBATIONARY LICENSE OR REGISTRATION (1) When the department issues a probationary license or registration, the licensee, registrant, or owner must:

(a) provide the parents and guardians of enrolled children notice of the probationary license or registration in a department-approved format within five working days of the licensee, registrant, or owner receiving the probationary license or registration;

(b) provide documentation to the department that parents or guardians of enrolled children have been notified within seven working days of the licensee, registrant, or owner receiving the probationary license or registration;

(c) inform parents or guardians of probationary status before enrolling new children; and

(d) post documentation of the probationary license or registration.

AUTH: 52-2-704, 52-2-741, MCA
IMP: 52-2-741, MCA

NEW RULE XCV PROVIDING UNLICENSED CARE (1) If the department determines a person is providing unlicensed care and is not license exempt, the department will send a notice including:

(a) the department's basis for determining unlicensed child care is being provided when a license is required;

(b) how to respond to the department;

(c) the law that requires child care to be licensed;

(d) that unlicensed child care must stop being provided;

(e) the consequences of providing unlicensed care and the penalties that may be imposed; and

(f) how to apply for a license and the benefits of licensure.

(2) If the department finds that a facility that requires a license is being or has been operated without a license, it may take steps pursuant to 52-2-741, MCA.

AUTH: 52-2-704, 52-2-741, MCA
IMP: 52-2-741, MCA

NEW RULE XCVI REAPPLICATION AFTER DENIAL, SUSPENSION, OR REVOCATION (1) Applicants who have been denied due to an incomplete application may reapply for a license or registration immediately.

(2) Individuals or legal entities that have had a child care license or registration suspended may not reapply for licensure or registration within one year of the suspension.

(3) If the suspension is contested and upheld after an administrative hearing, the reapplication may not be made until one year after the date of the final agency decision.

(4) Individuals or legal entities that have had a child care license or registration revoked are permanently ineligible for licensure, registration, or a staff position at a child care facility.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE XCVII FAIR HEARING (1) An applicant, licensee, or registered provider who is subject to a negative licensing action is entitled to a fair hearing in accordance with ARM 37.5.103.

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-726, 52-2-731, MCA

4. The department proposes to repeal the following rules:

37.95.102 DEFINITIONS

AUTH: 52-2-704, 53-4-212, MCA
IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-2-201, 53-4-211, 53-4-212, 53-4-611, MCA

37.95.103 FAMILY, FRIEND, AND NEIGHBOR (FFN) PROVIDERS: REQUIREMENTS AND PROCEDURES

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-731, MCA

37.95.104 DETERMINATION OF NEED FOR LICENSE OR REGISTRATION: COUNTING PROVIDER'S OWN CHILDREN

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-731, MCA

37.95.105 DETERMINATION OF NUMBER OF CHILDREN UNDER CARE: COUNTING PROVIDER'S AND OTHER CHILDREN

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-731, MCA

37.95.106 CHILD CARE FACILITIES, REGISTRATION, OR LICENSING

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-722, 52-2-723, 52-2-731, MCA

37.95.108 CHILD CARE FACILITIES, REGISTRATION, AND LICENSING PROCEDURES

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-732, 52-2-733, MCA

37.95.110 RELATIVE CARE EXEMPT (RCE) PROVIDERS: REQUIREMENTS AND PROCEDURES

AUTH: 52-2-704, MCA
IMP: 52-2-703, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, MCA

37.95.115 DAY CARE PARENT INFORMATION

AUTH: 52-2-704, MCA
IMP: 52-2-723, 52-2-731, 52-2-735, MCA

37.95.117 CHILD CARE FACILITIES, JOINT PROGRAMS

AUTH: 52-2-704, MCA
IMP: 52-2-731, MCA

37.95.121 CHILD CARE FACILITIES: SAFETY REQUIREMENTS

AUTH: 52-2-704, 52-2-731, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-734, 52-2-735, MCA

37.95.124 CHILD CARE FACILITIES: EMERGENCY DISASTER AND ACTION PLANS

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-734, MCA

37.95.126 DAY CARE FACILITIES, SMOKE-FREE ENVIRONMENT

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-731, MCA

37.95.127 CHILD CARE FACILITIES: SWIMMING

AUTH: 52-2-704, MCA
IMP: 52-2-731, 52-2-735, MCA

37.95.128 DOCUMENTATION OF THE ABSENCE OF UNUSUAL HEALTH RISKS FOR CHILDREN UNDER AGE TWO

AUTH: 52-2-704, MCA
IMP: 52-2-731, MCA

37.95.132 TRANSPORTATION

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-733, MCA

37.95.139 CHILD CARE FACILITIES: HEALTH CARE REQUIREMENTS

AUTH: 52-2-704, 52-2-735, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-735, MCA

37.95.140 IMMUNIZATION

AUTH: 52-2-704, 52-2-735, MCA
IMP: 52-2-704, 52-2-735, MCA

37.95.141 CHILD CARE FACILITIES: RECORDS

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-731, 52-2-732, 52-2-736, MCA

37.95.146 DAY CARE FACILITIES: LICENSE OR REGISTRATION NOT TRANSFERABLE

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.149 DAY CARE FACILITIES: LICENSE FOR EACH PREMISES

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-721, MCA

37.95.153 DAY CARE FACILITIES: NOTICE OF CHANGES

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.154 DAY CARE FACILITIES: COOPERATION WITH THE DEPARTMENT AND DEPARTMENT ACCESS

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-732, 52-2-733, MCA

37.95.155 DAY CARE FACILITIES: RECORDS

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-732, MCA

37.95.156 DAY CARE CENTERS: CONFIDENTIALITY REQUIREMENTS

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, MCA

37.95.160 CHILD CARE FACILITIES: STAFF RECORDS

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-732, MCA

37.95.161 CHILD CARE FACILITIES: FINGERPRINT AND BACKGROUND CHECK REQUIREMENTS

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.162 CHILD CARE FACILITIES: REQUIRED ANNUAL TRAINING

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.163 CHILD CARE FACILITIES: EARLY CHILDHOOD TEACHER ORIENTATION TRAINING

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.165 DAY CARE FACILITIES: NOTICE OF CURRENT ADDRESS

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.168 DAY CARE FACILITIES: REQUIRING EXAMINATIONS

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.169 IDENTIFYING AND PREVENTING SHAKEN BABY SYNDROME AND ABUSIVE HEAD TRAUMA

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.171 DAY CARE FACILITIES: MANDATED REPORTING OF SUSPECTED CHILD ABUSE AND NEGLECT

AUTH: 52-2-704, MCA
IMP: 41-3-102, 52-2-704, MCA

37.95.172 CHILD CARE FACILITIES: SUPERVISION AT ALL TIMES

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.173 CHILD CARE FACILITIES: PROTECTION OF CHILDREN FROM A PERSON CHARGED WITH A CRIME INVOLVING CHILDREN, VIOLENCE, OR DRUGS

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.175 DAY CARE FACILITIES: REAPPLICATION AFTER SUSPENSION OF REVOCATION

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.176 DAY CARE FACILITIES: NEGATIVE LICENSING ACTION

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-726, 52-2-731, MCA

37.95.181 DAY CARE FACILITIES: MEDICATION ADMINISTRATION

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-732, 52-2-733, 52-2-736, MCA

37.95.182 DAY CARE FACILITIES: STORAGE AND ADMINISTRATION OF MEDICATION

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-732, MCA

37.95.183 CHILD CARE FACILITIES: FIRST AID REQUIREMENTS

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.184 CHILD CARE FACILITIES: HEALTH HABITS

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.205 SOLID WASTE

AUTH: 52-2-735, 53-4-406, MCA
IMP: 52-2-735, 53-4-506, MCA

37.95.206 LAUNDRY

AUTH: 52-2-735, 53-4-506, MCA
IMP: 52-2-735, 53-4-506, MCA

37.95.207 GENERAL HOUSEKEEPING

AUTH: 52-2-735, 53-4-506, MCA
IMP: 52-2-735, 53-4-506, MCA

37.95.210 SPECIAL REQUIREMENTS FOR CHILDREN REQUIRING CRIBS OR DIAPERS

AUTH: 52-2-735, MCA
IMP: 52-2-735, MCA

37.95.214 FOOD PREPARATION AND HANDLING

AUTH: 52-2-704, 52-2-735, 53-4-506, MCA
IMP: 52-2-704, 52-2-735, 53-4-506, MCA

37.95.215 NUTRITION

AUTH: 52-2-704, 52-2-735, 53-4-506, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-735, 53-4-506, MCA

37.95.225 WATER SUPPLY SYSTEM

AUTH: 52-2-704, 52-2-735, 53-4-506, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-735, 53-4-506, MCA

37.95.226 SEWAGE SYSTEM

AUTH: 52-2-735, 53-4-506, MCA
IMP: 52-2-735, 53-4-506, MCA

37.95.227 SWIMMING POOLS

AUTH: 52-2-735, 53-4-506, MCA
IMP: 52-2-735, 53-4-506, MCA

37.95.602 CHILD CARE CENTERS, PROGRAM REQUIREMENTS

AUTH: 52-2-704, 53-4-503, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, 53-4-504, 53-4-508, MCA

37.95.606 CHILD CARE CENTERS, GUIDANCE AND DISCIPLINE

AUTH: 52-2-704, 53-4-503, MCA
IMP: 52-2-723, 52-2-731, 53-4-504, 53-4-508, MCA

37.95.610 DAY CARE CENTERS, SPACE

AUTH: 52-2-704, 53-4-503, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, 53-4-504, 53-4-508, MCA

37.95.611 DAY CARE CENTERS, SUPPORT SERVICES SPACE

AUTH: 52-2-704, 53-4-503, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, 53-4-504, 53-4-508, MCA

37.95.613 DAY CARE CENTERS, MATERIALS AND EQUIPMENT

AUTH: 52-2-704, 53-4-503, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, 53-4-504, 53-4-508, MCA

37.95.619 DAY CARE CENTERS, NIGHT CARE

AUTH: 52-2-704, 53-4-503, MCA
IMP: 52-2-723, 52-2-731, 53-4-504, 53-4-508, MCA

37.95.622 CHILD CARE CENTERS: STAFFING QUALIFICATIONS

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.623 CHILD CARE CENTERS: CHILD-TO-STAFF RATIOS

AUTH: 52-2-704, MCA
IMP: 52-2-703, 52-2-704, 52-2-723, 52-2-731, MCA

37.95.624 CHILD CARE CENTERS: DIRECTOR QUALIFICATIONS AND RESPONSIBILITIES

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.640 DAY CARE CENTERS, LICENSING SERVICES PROVIDED

AUTH: 52-2-704, MCA
IMP: 52-2-731, 52-2-733, MCA

37.95.702 GROUP DAY CARE AND FAMILY DAY CARE HOMES, STAFFING AND ADDITIONAL REQUIREMENTS

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.703 GROUP AND FAMILY CHILD CARE FACILITIES: DIRECTOR RESPONSIBILITIES AND QUALIFICATIONS

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.704 GROUP AND FAMILY CHILD CARE: STAFFING QUALIFICATIONS AND RESPONSIBILITIES

AUTH: 52-2-704, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.705 GROUP AND FAMILY CHILD CARE FACILITIES: BUILDING REQUIREMENTS

AUTH: 52-2-704, 53-4-503, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-734, 53-4-504, MCA

37.95.706 GROUP AND FAMILY CHILD CARE FACILITIES: FIRE SAFETY REQUIREMENTS

AUTH: 52-2-704, 53-4-503, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-734, 53-4-504, MCA

37.95.708 GROUP AND FAMILY DAY CARE HOMES, OTHER FACILITY REQUIREMENTS

AUTH: 52-2-704, 52-2-735, 53-4-503, MCA
IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-735, 53-4-504, MCA

37.95.711 GROUP AND FAMILY DAY CARE FACILITY NUTRITION

AUTH: 52-2-704, MCA
IMP: 52-2-731, MCA

37.95.715 GROUP AND FAMILY DAY CARE HOMES, PROGRAM REQUIREMENTS

AUTH: 52-2-704, 53-4-503, MCA
IMP: 52-2-731, 53-4-504, MCA

37.95.718 GROUP DAY CARE AND FAMILY DAY CARE HOMES, NIGHT CARE AND OVERLAP

AUTH: 52-2-731, 52-2-735, MCA
IMP: 52-2-723, 52-2-731, 52-2-735, MCA

37.95.720 GROUP AND FAMILY DAY CARE HOMES, EQUIPMENT

AUTH: 52-2-704, 53-4-503, MCA
IMP: 52-2-731, 53-4-504, MCA

37.95.730 GROUP CHILD CARE AND FAMILY CHILD CARE FACILITIES: REGISTRATION SERVICES PROVIDED

AUTH: 52-2-704, MCA
IMP: 52-2-731, 52-2-733, MCA

37.95.1001 INFANT'S AND TODDLER'S DIAPERING AND TOILET TRAINING

AUTH: 52-2-704, MCA
IMP: 52-2-731, MCA

37.95.1002 INFANT'S AND TODDLER'S WET OR SOILED CLOTHING

AUTH: 52-2-704, MCA
IMP: 52-2-731, MCA

37.95.1003 INFANT'S AND TODDLER'S FEEDING

AUTH: 52-2-704, MCA
IMP: 52-2-731, MCA

37.95.1004 INFANT'S AND TODDLER'S, BATHING

AUTH: 52-2-704, MCA
IMP: 52-2-731, MCA

37.95.1005 INFANT AND TODDLER, SLEEPING

AUTH: 52-2-704, MCA
IMP: 52-2-731, MCA

37.95.1011 INFANT'S AND TODDLER'S, ACTIVITIES

AUTH: 52-2-704, MCA
IMP: 52-2-731, MCA

37.95.1015 INFANT'S AND TODDLER'S, OUTDOOR ACTIVITIES

AUTH: 52-2-704, MCA
IMP: 52-2-731, 52-2-736, MCA

37.95.1016 INFANT'S AND TODDLER'S, EQUIPMENT

AUTH: 52-2-704, MCA
IMP: 52-2-731, MCA

37.95.1021 INFANT'S AND TODDLER'S, SPECIAL REQUIREMENTS FOR DAY CARE CENTERS

AUTH: 52-2-704, MCA
IMP: 52-2-731, MCA

37.95.1101 DEFINITIONS

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-703, 52-2-704, MCA

37.95.1105 APPLICANT REQUIREMENTS FOR DROP-IN DAY CARE CENTERS

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-721, 52-2-722, 52-2-723, 52-2-724, 52-2-731, MCA

37.95.1110 DROP-IN DAY CARE CENTER PLAN OF OPERATION

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-723, 52-2-724, 52-2-731, MCA

37.95.1120 DROP-IN DAY CARE CENTER SPACE REQUIREMENTS

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-731, MCA

37.95.1130 EMERGENCY CARDS AND HEALTH HISTORY FORMS

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-723, 52-2-731, MCA

37.95.1140 EMERGENCY SAFETY REQUIREMENTS

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-731, 52-2-734, MCA

37.95.1150 MATERIALS AND EQUIPMENT

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-731, MCA

37.95.1160 FOOD SERVICE

AUTH: 52-2-704, MCA
IMP: 52-2-702, MCA

37.95.1170 STAFFING QUALIFICATIONS

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-723, 52-2-731, MCA

37.95.1180 CARE OF INFANTS

AUTH: 52-2-704, MCA
IMP: 52-2-702, 52-2-731, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to repeal the entirety of ARM Title 37, chapter 95, and create an updated, restructured child care licensing schema under a new chapter. In accordance with the Gianforte administration's commitment to expanding access to quality and affordable child care for Montana families, the department intends for these changes to remove unnecessary regulatory barriers for licensed and registered child care providers in Montana. The proposed rule repeals and restructuring will decrease barriers and increase capacity for quality and affordable child care, address stakeholder requests for increased clarity and consistency, meet the guidelines of Governor Gianforte's Red Tape Relief/Regulatory Reform Initiative (RRI), and comply with legislation passed during the 2021 Session of the Montana Legislature. Throughout this process, the department also carefully balanced its obligations to ensure the health and safety of children in care with the elimination of unnecessary regulatory burdens.

The department conducted a comprehensive child care licensing assessment to determine how we can make child care licensing work better for providers and families. The information we learned through this process informed the regulation improvements in this rule change package. The assessment engaged a multitude of diverse stakeholders to understand the strengths and gaps in the current child care licensing schema. Robust engagement occurred through a contractor-led assessment process, in which more than 700 child care facility owners and staff, parents, employers, state and local agency partners (fire, environmental health, public health), legislators, and interested parties provided input on the rules through

surveys, interviews, and focus groups from September 2021 through April 2022. Engagement also occurred through business-process improvement job shadowing and site visits, detailed rule review meetings with state agency partners, and a work group of out-of-school-time providers. In summary, the proposed rule repeals and restructuring are largely informed by feedback from relevant stakeholders and other interested parties.

Additionally, the department reviewed and applied the RRI criteria to each existing rule, evaluating if each rule serves a legitimate purpose, is not redundant, creates the lowest burden possible to meet the need, and is clear in language and intent.

Overall Structure

The structure of the proposed rule changes is a wholesale re-organization of the child care licensing rules in ARM Title 37, chapter 95. The department recognizes that the current organization by provider type has created confusion and duplication. To remedy this, the proposed rules will be re-organized by topic and will clarify within each new rule the applicability to types of providers or facilities. The proposed rule subchapters are:

1. General
2. Program Activities
3. Administrative
4. Safety and Facilities
5. Medical Health
6. Environmental Health
7. Nutrition and Food Service
8. Immunizations
9. Staff Qualifications and Training
10. Background Checks
11. Enforcement

Rules Repealed

The department proposes to repeal ARM 37.95.104, 37.95.128, and 37.95.168.

- The content from ARM 37.95.104 has been simplified and streamlined in proposed NEW RULE III.

- ARM 37.95.128 creates unnecessary administrative burden for families and providers. The elimination of this rule will result in less required paperwork before a child may be enrolled in child care, and less paperwork that providers will have to store and maintain after enrollment. This rule is also duplicative as the same information is already contained in a standard medical form required by current ARM 37.95.141 and proposed NEW RULE XXIV.

- ARM 37.95.168 creates the potential for inappropriate intrusions into the private medical information of child care staff by the department.

The department proposes to repeal ARM 37.95.101, 37.95.102, 37.95.103, 37.95.105, 37.95.106, 37.95.108, 37.95.110, 37.95.114, 37.95.121, 37.95.146, 37.95.149, 37.95.172, 37.95.623, 37.95.640, 37.95.102, 37.95.718, 37.95.730, and 37.95.1105.

NEW RULE I: GENERAL DEFINITIONS

The department proposes to adopt a new general definitions regulation that is substantially similar to current ARM 37.95.102. The department intends this new rule would help ensure clarity throughout the entire chapter, reflect additional topical areas, and increase readability and useability. To ease readability and understanding, the department also proposes moving some of the definitions currently in ARM 37.95.102 to the beginnings of the new, proposed subchapters when the terms relate exclusively to the topic of a subchapter.

The department intends this new structure to be more user-friendly by providing one location for general, commonly used definitions, as well as discrete, topic-specific definitions.

NEW RULE II: TYPES OF LICENSES AND REGISTRATION

The proposed rule would combine and condense provisions from ARM 37.95.103, 37.95.108, 37.95.110, and 37.95.1105. This proposed rule is intended to provide a clear understanding about the types of child care programs that exist in Montana. This includes increased clarity in terms of what types of programs are required to be licensed, have the option to be licensed, or have the option to be registered. The intent of this proposed rule is to improve understanding among providers and families about the options and requirements for a child care license or registration. This would help new child care programs decide what kind of licensure or registration is required for their business, help current providers know what is expected of them to maintain licensure or registration, and help parents make informed decisions about what kind of child care program is the best fit for their children.

NEW RULE III: COUNTING CHILDREN TO DETERMINE NEED FOR LICENSING AND CHILDREN UNDER CARE

The department proposes to combine and condense ARM 37.95.104 and 37.95.105, to streamline the explanation about how children are counted when determining the type of license or registration for which a provider should apply. The proposed rule also contains new language that would clarify how a provider's or staff member's own children are counted when determining the number of children in care.

NEW RULE IV: CHILD-TO-STAFF RATIOS, STAFF NUMBERS, AND SUPERVISION

The department proposes to combine and condense ARM 37.95.103, 37.95.106, 37.95.172, 37.95.623, 37.95.702, and 37.95.718, all related to the child-to-staff ratios, ages of children in care, program type, and the timing of child care provided. The department proposes higher ratios and larger group sizes for out-of-school-time

providers caring only for school-age children. This proposed increase is warranted because older children require less assistance with basic tasks and can understand rules related to safety. The proposed rule would simplify the explanation of family and group child care program staff requirements, including for overlap care.

NEW RULE V: LICENSE OR REGISTRATION APPLICATION

The department proposes to include some provisions from ARM 37.95.106 in the proposed rule. This proposed rule would make information about how to apply for a child care license or registration very clear and easy to find.

NEW RULE VI: LICENSE-EXEMPT APPLICATION REQUIREMENTS

The proposed rule would combine content from ARM 37.95.103 and 37.95.110. The proposed rule would provide a clear, concise explanation of the requirements for prospective Relative Care Exempt (RCE) and Family, Friend, and Neighbor (FFN) providers before application for registration.

NEW RULE VII: ISSUING A LICENSE

The proposed rule would combine some provisions from ARM 37.95.108 with additional detail to provide a clear step-by-step process on how a child care license is issued. This proposed rule would better notify applicants of the department's licensing process and its obligations to applicants.

NEW RULE VIII: RENEWING A LICENSE OR REGISTRATION

This proposed rule would clarify content from ARM 37.95.106, to provide clear information on license and registration renewal in a logical place–after the proposed rule on issuance of a new license or registration. The intent is for providers to have a roadmap of the licensing and registration processes in rule using a sequential order. The proposed rule would require renewal applications to be submitted 60 days before the current license or registration expires to allow sufficient time for the renewal application to be processed. The proposed rule would also ensure providers retain a full license or registration to allow for continuity of services if the department delays processing the renewal application.

NEW RULE IX: LICENSE OR REGISTRATION APPLICATION DENIAL

This proposed rule would clarify content from ARM 37.95.103 and provide straightforward information in one rule on why certain new or renewal applications must be denied, to promote clarity and understanding.

NEW RULE X: TECHNICAL ASSISTANCE

The department proposes to combine content from ARM 37.95.640 and 37.95.730, to centrally highlight the department's responsibilities to provide licensing and registration support to providers.

NEW RULE XI: LICENSE OR REGISTRATION ASSIGNMENT

This proposed rule would combine content from ARM 37.95.146 and 37.95.149, to provide concise, condensed language on license and registration assignment.

NEW RULE XII: PROGRAM INSPECTIONS

This proposed rule would update content from ARM 37.95.103, 37.95.108, 37.95.640, and 37.95.730, to provide one rule about department inspections of licensed child care programs and registered FFN programs. The proposed rule clarifies that inspections can only occur during child care business hours. In addition to promoting clarity, these proposed changes are necessary to balance the department's responsibility to ensure child care programs are safe with providers' privacy, especially those who provide child care in their homes. This proposed change is in response to feedback received by the department that home-based facilities thought the current rule was unclear and allowed the department to inspect homes at any time, day or night.

NEW RULE XIII: REQUIREMENTS FOR FACILITIES OPERATING WITH JOINT PROGRAMS

This proposed rule uses content from ARM 37.95.117, and would clarify how a child care facility can be located in a building with another program not related to the child care program.

NEW RULE XIV: WAIVERS AND PILOT PROJECTS

This proposed rule includes requirements from ARM 37.95.106, regarding waivers, and clarifies that the department and its partner agencies, like local public health departments, can grant waivers to any child care licensing rule if health and safety of children can be ensured. The proposed rule would also add a new option for providers to develop innovative pilot projects under a provisional license to test new, innovative approaches to child care delivery. These proposed changes provide needed regulatory flexibility to pilot projects while still providing for the safety and well-being of children attending these programs.

Programming

The department proposes to repeal ARM 37.95.106, 37.95.169, 37.95.602, 37.95.606, 37.95.613, 37.95.619, 37.95.715, 37.95.718, 37.95.720, 37.95.1011, 37.95.1015, 37.95.1021, 37.95.1110, 37.95.1150, and 37.95.1180.

NEW RULE XV: PROGRAMMING DEFINITIONS

The department proposes to add content-specific definitions. In the proposed rule, some definitions have been added to reflect additional topical areas included in rules that would be compiled in a new subchapter on programming. These proposed organizational and substantive changes would increase useability of the rules by providing clear definitions of the terms used in the proposed rules on child care programming.

NEW RULE XVI: GENERAL PROGRAMMING REQUIREMENTS

The department proposes to combine and condense content from ARM 37.95.106, 37.95.602, 37.95.613, 37.95.715, 37.95.720, 37.95.1110, and 37.95.1150, focusing on requirements related to daily activities, equipment, and materials to support child development. The proposed rule would remove some of the specificity of current ARM 37.95.715, and add separate requirements for the newly created category of

out-of-school-time child care programs. This would provide guidance on programming that is age-appropriate and allow for flexibility to align with provider preferences while maintaining quality for children in care. The proposed rule would maintain but streamline core requirements that ensure child development and safety.

NEW RULE XVII: INFANT AND TODDLER ACTIVITY REQUIREMENTS

The department proposes to combine and condense content from ARM 37.95.103, 37.95.1011, 37.95.1015, and 37.95.1180 that relates to activity and programming requirements specific to infants and toddlers. The proposed rule would remove unnecessary detail to reduce burden and increase flexibility for providers. Bringing these requirements into a single rule would make it easier for providers and families to identify requirements for the youngest children in care. The proposed rule would maintain but streamline core requirements that ensure child development and safety.

NEW RULE XVIII: POSITIVE CHILD GUIDANCE

The department proposes to combine and condense content from ARM 37.95.169, 37.95.606, 37.95.715, and 37.95.1110, related to child guidance and discipline. The proposed rule would use the language and description of positive child guidance, which is an updated term for positive discipline, and maintain prohibitions against abusive physical or emotional punishment. This would give providers more clarity on best practices associated with positive child guidance and would give parents assurance that no abusive punishment will be used.

Administrative

The department proposes to repeal ARM 37.95.103, 37.95.106, 37.95.115, 37.95.121, 37.95.124, 37.95.139, 37.95.140, 37.95.153, 37.95.155, 37.95.156, 37.95.160, 37.95.165, 37.95.169, 37.95.171, 37.95.183, 37.95.184, 37.95.613, 37.95.622, 37.95.702, 37.95.703, 37.95.704, 37.95.708, 37.95.711, 37.95.1110, 37.95.1130, and 37.95.1140.

The department proposes to repeal ARM 37.95.140 to align with SB 215, and to include documentation of religious exemptions as a type of child record that providers must keep.

The department proposes to repeal ARM 37.95.160, 37.95.184, 37.95.622, 37.95.703, and 37.95.704, to remove staff vaccination requirements and to align child care staff vaccination requirements with vaccination requirements for staff in public school settings.

NEW RULE XIX: ADMINISTRATIVE HEALTH DEFINITIONS

The department proposes to add a definitions rule specific to terms used in the rules on administrative requirements. In the proposed rule, the definitions of some terms would be added to reflect the use of these specialized administrative terms. This would increase readability and useability of the new subchapter by providing providers, staff, and families with clear definitions of the terms used in the administrative rules, collected in one place.

NEW RULE XX: EMERGENCY COMMUNICATION

The department proposes to combine content from ARM 37.95.103, 37.95.121, 37.95.183, 37.95.613, 37.95.708, and 37.95.1140, related to emergency communication. The proposed rule would collapse duplicative content from each of the current rules into one rule. This would make it easier for providers to immediately identify the requirements associated with emergency communication.

NEW RULE XXI: POLICY REQUIREMENTS

The department proposes to combine content from ARM 37.95.103, 37.95.124, 37.95.139, 37.95.155, 37.95.169, 37.95.171, 37.95.183, and 37.95.1140, on the policies that each type of provider is required to maintain. The proposed rule would collapse duplicative content from each of the current rules, without change, into one rule. It would also add policy requirements specific to licensed out-of-school-time programs and registered FFN providers. This would offer clarity to providers to ensure all necessary policies are identified and in place, and provide families with a clear and concise list of policies they should expect a licensed or registered child care provider to have. The proposed rule would maintain but streamline core policy requirements that ensure health and safety of children in care.

NEW RULE XXII: RECORD RETENTION

The department proposes to repeal ARM 37.95.155 and replace it with NEW RULE XXII to clarify how long and in what format providers are required to maintain records. The proposed rule would add the option for electronic files/records and make clear that department representatives only have the authority to request access to records during regular business hours. This would give providers more flexibility in how they maintain records and decrease the burden that comes from uncertainty about record retention formats and the duration of their record retention obligation. It would also make clear that the department cannot make onerous records requests.

NEW RULE XXIII: PROGRAM RECORDS

The department proposes to combine content from ARM 37.95.106, 37.95.141, 37.95.702, 37.95.711, and 37.95.1110, related to recordkeeping about the program and facility. The proposed rule would add detail to clarify which records are required of all licensed and registered providers, which are required only of licensed providers, and which are required only of providers with 16 or more children receiving care. This would give providers a clear checklist of records they are required to keep and will decrease the burden associated with determining the applicable requirements and maintaining the required records. The proposed rule would maintain but streamline core required records that ensure the health and safety of children in care and the safety of the facility.

NEW RULE XXIV: CHILDREN'S RECORDS

The department proposes to combine and condense content from ARM 37.95.139, 37.95.141, 37.95.156, 37.95.184, 37.95.411, 37.95.702, 37.95.703, and 37.95.1130, on recordkeeping about children in care. This would collapse duplicative content from each of the current rules into one rule. It would also integrate records related to

safe sleep into general recordkeeping. This proposal would give providers a clear checklist of records they are required to keep and decrease the burden on providers and families of having to complete more paperwork or at a higher frequency than is necessary. The proposed rule would maintain but streamline core required records that ensure the health and safety of the children in care.

NEW RULE XXV: STAFF RECORDS

The department proposes to combine and condense content from ARM 37.95.106, 37.95.160, 37.95.169, 37.95.184, 37.95.1005, and 37.95.1110, on recordkeeping about staff training and responsibilities. The proposed rule would remove requirements for records related to health statements and immunizations, as the department proposes to eliminate these requirements. This would decrease the burden on staff and providers to ensure that staff meet all requirements and streamline staff requirements by aligning child care staff requirements with staff requirements applicable in public school settings. Based on feedback from the assessment of child care providers and staff, the department believes that streamlining staff record requirements would decrease the burden on child care programs to obtain and maintain such records, and on new staff hires to provide detailed and personal information to the child care programs. The department believes that this may increase interest in child care staff positions, support provider recruitment and retention efforts, and ultimately increase the overall labor pool for child care.

NEW RULE XXVI: FAMILY ACCESS TO INFORMATION

The department proposes to combine and condense content from ARM 37.95.103, 37.95.115, 37.95.141, and 37.95.183, pertaining to how families can access program and child-specific information, as well as to the facility itself. The proposed rule would clarify which information is required to be made available to parents and at what times. This would give providers and parents a clear and shared understanding related to communication. Providing parents with the child care program's policies on the listed topics prior to enrollment would help them make informed decisions in choosing a child care program.

NEW RULE XXVII: NOTIFICATIONS TO THE DEPARTMENT

The department proposes to combine and condense ARM 37.95.103, 37.95.153, 37.95.165, 37.95.171, and 37.95.183, related to situations in which the department must be contacted by the provider. The proposed rule would provide clarifications in language and combine content that is identical across several current rules. This would give providers a clear and simple list of reporting requirements, decreasing uncertainty and unnecessary reporting and/or paperwork.

Safety and Facilities

The department proposes to repeal ARM 37.95.103, 37.95.106, 37.95.121, 37.95.124, 37.95.127, 37.95.132, 37.95.205, 37.95.207, 37.95.210, 37.95.610, 37.95.611, 37.95.613, 37.95.705, 37.95.706, 37.95.718, 37.95.720, 37.95.1005, 37.95.1015, 37.95.1016, 37.95.1021, 37.95.1105, 37.95.1110, 37.95.1120, 37.95.1140, and 37.95.1180.

NEW RULE XXVIII: SAFETY AND FACILITIES DEFINITIONS

The department proposes to add content-specific definitions, so that the grouping of proposed rules on safety and facilities would have definitions of terms that are specific to such topics. Some new definitions have been proposed specific to these topical areas. This would increase the readability and useability of the rules by giving providers, staff, and families clear definitions of the terms dealing with safety and facilities issues.

NEW RULE XXIX: HAZARDS

The department proposes to combine and condense content from ARM 37.95.103, 37.95.121, 37.95.207, 37.95.705, and 37.95.1110, related to minimizing safety hazards in and around child care facilities. The proposed rule would collapse content that is identical across several current rules into one rule. The proposed changes would clarify that safety standards as they relate to firearms specifically are applicable during business hours and add guidelines for guardrails on tall platforms (decks, stairs). This reorganization would give providers a single location to assess whether their facility has any hazard concerns, which may reduce the burden of uncertainty around specific safety requirements. The proposed rule would maintain but streamline safety standards for children in care.

NEW RULE XXX: ANIMALS

The department proposes to combine content from ARM 37.95.121 and 37.95.1110, on the presence of animals in a child care facility. The proposed rule would provide clear guidance on how to include domesticated animals at facilities. This would give in-home providers more flexibility to include pets and other domesticated animals in their child care programs. The proposed rule would maintain but streamline requirements to protect the safety of children in care.

NEW RULE XXXI: BUILDING REQUIREMENTS RELATED TO EXITS

The department proposes to combine and condense content from ARM 37.95.121, 37.95.610, 37.95.705, and 37.95.1110, related to exits and egress. The proposed rule would clarify content that is similar, but not identical, across several current rules and align building exit and egress requirements with international fire and building codes. New content is proposed to make it explicit that there are opportunities for child care providers to use apartment buildings and basements as child care facilities, provided there are adequate fire safety options in place. This would standardize building requirements across all provider types and decrease confusion about exits and egresses. It would also support increased capacity for providers residing in different types of residential settings. The proposed rule would support but streamline core fire safety and building code requirements.

NEW RULE XXXII: INDOOR SPACE REQUIREMENTS

The department proposes to combine and condense content from ARM 37.95.610, 37.95.611, 37.95.705, 37.95.1021, 37.95.1120, and 37.95.1180, related to indoor space requirements. The proposed rule would combine content that is identical across several rules, eliminating redundancy, and reduce regulations of how indoor

space may be used. The proposed rule would add flexibility for programs in shared spaces to utilize some indoor space on an infrequent basis (like a school gym or library). It also would make explicit that there are opportunities for child care providers to use apartment buildings and basements as child care facilities, provided there are adequate fire safety options in place. This would increase flexibility for many types of providers in shared spaces as well as for providers residing in different types of residential settings. These changes are being proposed with the goal of increasing overall child care capacity and diversity. The proposed rule would maintain but streamline core safety requirements of indoor spaces.

NEW RULE XXXIII: OUTDOOR SPACE REQUIREMENTS

The department proposes to combine and condense content from ARM 37.95.103, 37.95.121, 37.95.610, 37.95.1015, and 37.95.1120, on the requirements for outdoor space. The proposed rule would clarify content that is similar, but not identical, across multiple current rules. The proposed rule would add flexibility to requirements for utilizing shared outdoor space if that space meets alternative, but equally rigorous, safety standards. This would give out-of-school-time programs and programs interested in different types of outdoor education more flexibility in meeting outdoor space requirements. It would also support programs in urban settings without access to private outdoor space in utilizing public outdoor space to meet requirements. These changes are intended to increase overall child care capacity and diversity. The proposed rule would maintain but streamline core safety standards for outdoor spaces.

NEW RULE XXXIV: FIRE SAFETY REQUIREMENTS

The department proposes to combine and condense content from ARM 37.95.103, 37.95.106, 37.95.121, 37.95.706, and 37.95.1110, related to fire safety. The proposed rule would clarify content that is similar, but not identical, across several current rules. The proposed rule would clarify the role of the fire marshal in inspecting child care facilities with 16 or more children. This would decrease confusion among providers about fire safety requirements and increase consistency in expectations across all provider types, which could improve overall safety of children and staff. The proposed rule would maintain but streamline core fire safety standards.

NEW RULE XXXV: EMERGENCY AND DISASTER PREPARATION

The department proposes to combine and condense content from ARM 37.95.103, 37.95.106, 37.95.124, and 37.95.1140 related to emergency preparedness. The proposed rule would combine content that is similar, but not identical, across several current rules and add detail to clarify and align requirements for registered FFN providers with federal requirements. This would decrease burden on providers by providing a checklist of plans and actions necessary for emergency preparedness, improving overall safety of children and staff.

NEW RULE XXXVI: SAFETY AROUND BODIES OF WATER

The department proposes to combine and condense content from ARM 37.95.103 and 37.95.127, related to safety around swimming pools and other bodies of water.

The proposed rule would remove confusing language and detail supervision requirements for children around swimming pools and other bodies of water. The proposed rule would provide the strongest supervision requirements for the youngest children, who are unable to swim or touch the bottom of most bodies of water and lessen the requirements for older children. This would give out-of-school-time programs more flexibility to take children on field trips involving water bodies without jeopardizing child safety.

NEW RULE XXXVII: TRANSPORTATION SAFETY

The department proposes to repeal ARM 37.95.132 and replace it with NEW RULE XXXVII to reduce unnecessary and redundant detail, and to add detail that aligns with the needs of out-of-school-time providers. The proposed rule would consolidate requirements related to child seats and restraints, and overall safe driving practices. It also would clarify how providers may use school buses for program-related transportation. This would decrease the burden of an overly prescriptive rule and give out-of-school-time providers the option to utilize various forms of transportation, which could increase overall child care capacity for school-age children.

NEW RULE XXXVIII: SLEEPING

The department proposes to combine and condense content from ARM 37.95.103, 37.95.121, 37.95.210, 37.95.613, 37.95.619, 37.95.718, 37.95.720, 37.95.1005, 37.95.1016, 37.95.1105, and 37.95.1110, on safe sleep environments. The proposed rule would combine content that is similar, but not identical, across several rules and reduce redundancy. The proposed rule would use the definition of firm sleep surface proposed in another proposed rule, which includes cradleboards. This proposed rule would provide a single, clear location for all sleep requirements and guidance, which could improve the safety of children while in a sleep environment by using a simple, clear definition of a safe sleep environment. It is also intended to support a culturally sensitive approach to safe sleep by clarifying when and how a firm sleep surface, including cradleboards, can be used. The proposed rule would maintain but streamline core sleep safety standards.

Managing the Health of Children in Care

The department proposes to repeal ARM 37.95.103, 37.95.181, 37.95.182, 37.95.183, 37.95.184, 37.95.1015, and 37.95.1110.

NEW RULE XXXIX: MEDICAL HEALTH DEFINITIONS

The department proposes to organize the definition of terms specific to medical and health issues in this proposed rule, so that the definition of such terms is located, in the same new subchapter, with the rules that address such issues and topics. To offer providers greater clarity, some additional terms would be defined in this proposed rule. The department expects that the grouping of the definitions with the related issues and topics would increase the readability and useability of the rules.

NEW RULE XL: MEDICATION ADMINISTRATION

The department proposes to combine and condense content in ARM 37.95.103, 37.95.181, 37.95.182, and 37.95.1110, related to the handling, storage, and

administration of medications. The proposed rule would combine content that is similar, but not identical, across a number of current rules and remove the redundancy in the current rules. This would give providers and parents a single location for all requirements related to medication, which could improve child safety through better medication management. The proposed rule would maintain but streamline core medication safety standards.

NEW RULE XLI: MANAGEMENT OF ILLNESS

The department proposes to combine and condense content from ARM 37.95.103, 37.95.139, 37.95.184, and 37.95.1110, related to the management of illnesses in children and staff. The proposed rule would update many exclusion and inclusion criteria (when a child must be sent home because of illness and when they can stay or return to child care) to align with current standards from the American Academy of Pediatrics. It would also align exclusion requirements with HB 702 passed in the 2021 legislative session, which barred discrimination based on immunization status. HB 702 excludes from the bar on discrimination vaccination requirements set forth for day care facilities pursuant to Title 52, chapter 2, part 7, MCA (Montana Child Care Act). However, other child care rules that do not constitute "vaccination requirements" are subject to HB 702's bar on vaccination status discrimination. Current ARM 37.95.140(8) makes distinctions between people based on their vaccination status, and the proposed rule would remove this distinction, to align with HB 702. This would decrease burden on families due to fewer illnesses now requiring full exclusion from child care, and give providers more flexibility in how they manage day-to-day illnesses. The proposed rule also clarifies the appropriate communication pathways in the event of a communicable disease outbreak, which could decrease overall impact on child care availability by increasing timely communication among child care providers, families, and the local health authority. The proposed rule would not increase health risks to children.

NEW RULE XLII: FIRST AID

The department proposes to combine and condense content from ARM 37.95.183, 37.95.1015, and 37.95.1110, on required first aid supplies and procedures. The proposed rule includes only content from existing rules that directly relates to first aid; no new requirements are being proposed. However, the proposed reorganization of the requirements into one rule would give providers and families a clear understanding of how first aid is to be administered in child care settings.

Environmental Health

The department proposes to repeal ARM 37.95.103, 37.95.106, 37.95.126, 37.95.184, 37.95.205, 37.95.206, 37.95.207, 37.95.210, 37.95.214, 37.95.225, 37.95.226, 37.95.227, 37.95.708, 37.95.1001, 37.95.1002, 37.95.1004, 37.95.1021, 37.95.1110, and 37.95.1180.

NEW RULE XLIII: ENVIRONMENTAL HEALTH DEFINITIONS

The department proposes to group definitions related to environmental health in this proposed rule, immediately before the substantive rules on environmental health, in a new subchapter on environmental health. In the proposed rule, some definitions of

new terms have been proposed. The proposed reorganization is intended to increase readability and useability.

NEW RULE XLIV: HEALTH RULES INCLUDED IN INSPECTION BY PUBLIC HEALTH AUTHORITIES

The department proposes to repeal content from ARM 37.95.106 related to the role of public health authorities in inspecting licensed child care programs of 16 or more children and proposes to create NEW RULE XLIV. The proposed rule does not include the list of rules that fall under environmental health or the current requirement for multiple, duplicative inspections when a child care program utilizes a space that is independently subject to public health inspections. This proposed change would decrease the burden on any child care program operating in a shared space and clarify the role of public health inspections for licensed child care centers and other providers with 16 or more children.

NEW RULE XLV: SMOKE-FREE ENVIRONMENT

The department proposes to combine content from ARM 37.95.103 and 37.95.126, related to smoke-free environments. The proposed rule would add vapor product use to the list of prohibited activities while children are in care. This would clarify for child care providers and staff that all child care facilities must be completely smoke-free, which could improve overall child health, while not arbitrarily prohibiting adult use of tobacco, nicotine, and vapor products outside of child care hours.

NEW RULE XLVI: OUTDOOR AIR QUALITY

The department proposes to add a rule on outdoor air quality standards that would align with public health requirements applicable to public schools (ARM 37.111.827). The proposed rule would require providers to follow outdoor air quality guidelines to determine when and where outdoor activities should occur. This would protect children from the negative impacts of smoke and other outdoor air pollutants by giving providers and staff clear guidelines about when exposure to outdoor air would be harmful, which could improve overall child health.

NEW RULE XLVII: INDOOR AIR QUALITY

The department proposes to add a rule related to indoor air quality and to integrate content from ARM 37.95.207 related to indoor air. The proposed rule is a simplified version of public school requirements related to indoor air quality (ARM 37.111.826) and includes air temperature as well. Based on updated information about how to decrease the likelihood of communicable disease and allergens indoors, the department believes that buildings with centralized HVAC systems should maintain minimum cleanliness standards. This proposed rule would protect children from airborne pathogens and allergens, which could improve overall child health.

NEW RULE XLVIII: HAND HYGIENE

The department proposes to combine and condense content from ARM 37.95.103, 37.95.184, 37.95.207, 37.95.708, and 37.95.1110, on handwashing. The proposed rule would decrease the number of regulations on hand washing and focus on the desired outcome, which is consistent hand washing before and after key activities.

This should decrease the burden of following overly detailed rules, which could increase compliance and, thus, improve the overall health of children. The proposed rule would maintain but streamline protections for child health.

NEW RULE XLIX: BATHROOM HYGIENE

The department proposes to combine and condense content from ARM 37.95.103, 37.95.207, 37.95.210, 37.95.214, 37.95.708, and 37.95.1001, related to maintaining clean bathrooms and bathroom routines. The proposed rule would combine content that is similar, but not identical, across multiple current rules. It also separates out proposed requirements on bathrooms from content on diapering (proposed NEW RULE LIII). This would decrease the burden on providers to maintain specific bathroom configurations and instead focus on the desired outcome, which is the avoidance of illness related to poor hygiene. The proposed rule would maintain protections for child health.

NEW RULE L: SOLID WASTE MANAGEMENT

The department proposes to combine and condense content from ARM 37.95.103, 37.95.205, 37.95.210, 37.95.708, 37.95.1001, and 37.95.1002, related to solid waste management. The proposed rule would reduce the requirements about how to dispose of solid waste, and focus instead on the desired outcome, which is the avoidance of contamination from solid waste. The proposed rule would decrease the regulatory burden on providers, while maintaining and streamlining protections for child health.

NEW RULE LI: LAUNDRY AND CLOTHING

The department proposes to combine and condense content from ARM 37.95.103, 37.95.206, 37.95.210, 37.95.708, 37.95.184, 37.95.1002, 37.95.1021, 37.95.1110, and 37.95.1180, on laundry and soiled clothing. The proposed rule would reduce the number of current requirements, and focus on the desired outcome, which is clean laundry that is not contaminated by soiled laundry and, thus, does not present a health hazard to children. This proposed rule would decrease the current burden on child care providers to comply with very specific regulatory requirements like the temperature of hot water.

NEW RULE LII: SANITATION

The department proposes to combine and condense content from ARM 37.95.207 and 37.95.708, related to sanitizing surfaces in a child care facility. The proposed rule would eliminate many of the detailed requirements of ARM 37.95.207, and add clarifying language to other requirements.

NEW RULE LIII: DIAPERING

The department proposes to combine and condense content from ARM 37.95.103, 37.95.210, 37.95.1001, and 37.95.1180. The proposed rule would not adopt many of the detailed requirements in ARM 37.95.1001, but maintain most required diapering practices. The proposed rule would also clarify and simplify requirements related to handling cloth diapers. This would decrease the burden on child care providers to ensure that they are meeting all diaper-related sanitation requirements,

and increase family choice by giving such providers guidance on accepting and utilizing cloth diapers.

NEW RULE LIV: BATHING

The department proposes to combine and condense content from ARM 37.95.207, 37.95.210, and 37.95.1004, related to bathing children. The proposed rule would combine requirements for bathing into one location and provide clarity to child care providers in meeting bathing requirements.

NEW RULE LV: WATER SUPPLY SYSTEM

The department proposes to combine and condense content from ARM 37.95.103, 37.95.225, and 37.95.708, related to water systems. The proposed rule is not substantially different from ARM 37.95.225, but would omit duplicative requirements from other current rules. This proposed rule would provide clarity on water system requirements for child care facilities.

NEW RULE LVI: SEWAGE SYSTEM

The department proposes to combine and condense content from ARM 37.95.103, 37.95.225, 37.95.226, and 37.95.708, related to sewage systems. The proposed rule is not substantially different from ARM 37.95.226, but would omit duplicative requirements from other current rules. This proposed rule would provide clarity on sewage system requirements for child care facilities.

NEW RULE LVII: SWIMMING POOL SANITATION

The department proposes to adopt this proposed rule to clarify swimming pool sanitation requirements. The proposed rule mirrors other, existing public health rules, providing common sense alignment.

NEW RULE LVIII: FOOD PREPARATION AND HANDLING

The department proposes to combine and condense content from ARM 37.95.103, 37.95.214, and 37.95.708, on preparing and handling food. The proposed rule would decrease the overall specificity of the current rules, and align with ARM 37.95.708. This proposed rule would decrease burden on child care providers to maintain equipment in a specific way, and instead focus on the desired outcome, which is the avoidance of food-borne illness or other food-related challenges. The proposed rule would maintain but streamline core food safety requirements that maintain child health and well-being.

Nutrition and Food Service

The department proposes to repeal ARM 37.95.102, 37.95.103, 37.95.215, 37.95.711, 37.95.720, 37.95.1003, 37.95.1016, 37.95.1021, 37.95.1105, 37.95.1160, and 37.95.1180.

NEW RULE LIX: NUTRITION AND FOOD SERVICE DEFINITIONS

The department proposes to group definitions related to nutrition and food service health in this proposed rule, immediately before the substantive rules on these subjects, in a new subchapter on the subjects. In the proposed rule, some new

definitions have been proposed. The intent of this proposed reorganization is to increase readability and useability of the rule chapter by providing clear definitions immediately before the rules in which the terms are used.

NEW RULE LX: NUTRITION REQUIREMENTS

The department proposes to combine and condense content from ARM 37.95.215, 37.95.619, 37.95.711, and 37.95.1160, related to nutrition. The proposed rule would decrease the overall specificity and detail of the current rules, and align with ARM 37.95.711. Currently this rule falls within the local health authority subchapter; the new structure and content makes it clear that local health authority staff are not responsible for overseeing these requirements.

NEW RULE LXI: INFANT FEEDING

The department proposes to condense and combine content from ARM 37.95.103, 37.95.1003, 37.95.1021, and 37.95.1180, related to infant feeding. The proposed rule would combine content that is similar, but not identical, across multiple current rules, and align with ARM 37.95.1003. The proposed rule is being updated to reflect current best practices related to infant feeding. This would decrease the burden on child care providers to make decisions about how they manage infant feeding, which could increase overall child care capacity for infants by improving providers' comfort with serving this population.

NEW RULE LXII: FOOD SERVICE EQUIPMENT

The department proposes to combine and condense content from ARM 37.95.103, 37.95.163, 37.95.720, 37.95.1003, 37.95.1016, and 37.95.1105, related to equipment for meal times. The proposed rule would combine content that is similar, but not identical, across multiple current rules, and add safety details about chairs that hook onto counters. This would decrease the burden on providers by providing a single location for these requirements.

Immunizations

The department proposes to repeal ARM 37.95.102, 37.95.140, and 37.95.1130 and remove staff immunization requirements from repealed ARM 37.95.160, 37.95.184, 37.95.622, 37.95.703, and 37.95.704.

NEW RULE LXIII: IMMUNIZATION DEFINITIONS

The department proposes to adopt the definitions in ARM 37.95.102 and add some additional definitions in this proposed rule, so that all terms related to immunizations are defined in this proposed rule, immediately adjacent to the proposed rules on immunizations. The department proposes to align the definitions of these vaccination terms with those used in ARM 37.114.701 through 37.114.799: Immunization of School Children. Aligning such terms and exemptions with the terms and exemptions applicable to schools allows for consistency for a parent or guardian as the child transitions from a child care facility to school, ease of understanding, and gives a parent or guardian the same exemption options allowed in K-12 schools. This would also increase the readability and useability of the rules by providing clear definitions of the terms used in this specific topical area.

NEW RULE LXIV: MINIMUM CHILD IMMUNIZATION REQUIREMENTS

The department proposes to align immunization requirements for out-of-school-time providers with public school regulations (ARM 37.114.703) and to clarify minimum vaccination requirements and exemptions applicable to FFN providers and RCE providers. The department proposes to clarify that there are no additional vaccine requirements for a child care program outside of the vaccines listed in proposed NEW RULE LXIV. This provides clarity as to the minimum requirements for children attending child care and allows for parental choice in any additional vaccines. It also offers clarity for providers and families on the minimum immunization requirements for a child in different types of child care settings.

NEW RULE LXV: EXEMPTIONS FROM VACCINATION

The department proposes to update its regulatory provisions on vaccine exemptions. The department proposes to add a religious exemption for all vaccines. It also proposes to clarify the requirements and applicability of medical exemptions. The department further proposes to clarify that vaccine records for children at a child care program are limited to child immunizations under the vaccine schedule listed in the proposed rule. The department proposes adding language that a home-based child care provider (FFN, family, and group child care facilities) has the option about whether they enroll children who are not vaccinated in accordance with the schedule in the proposed rule. Home-based providers would have to maintain policies and procedures to inform parents and guardians if the child care provider accepts children with exemptions from required vaccines. This, thus, would give choice to families with medical or religious exemptions; ensure compliance of the current and proposed vaccination requirement with SB 215 from the 2021 Montana legislative session; allow for parental choice in any additional vaccines a parent may choose for their child; simplify the documentation requirements for a parent or guardian because the same document could be used when a child who is not yet school-age transitions into a school setting; and give in-home providers the choice to set different policies to align with the needs of their own households. Ultimately, a parent or guardian would determine the child care setting that best suits the needs of their child(ren). If the parent or guardian is informed of the child care provider's vaccination policy, they can make the best decision for their child(ren). Under the proposal, child care centers would not have the same flexibility (1) in order to ensure there are child care settings supporting parents' and guardians' needs and choices regarding vaccinations; and (2) because the concerns that led to the proposal to provide flexibility for in-home providers do not apply to child care centers. Home-based business owners caring for mixed age groups are allowed autonomy in their choice to serve vaccination-exempt children; this will allow home-based providers to make choices for their own health and the health of their family members and the children in their care, who may not be old enough to be vaccinated. In contrast, child care centers are required to separate children by age group to protect younger children who have not yet had the opportunity to be vaccinated. The department will create an online list of providers by vaccination policy type so families can make the best choices for the care of their children.

NEW RULE LXVI: REQUIREMENTS FOR ADEQUATE DOCUMENTATION OF IMMUNIZATION STATUS

The department proposes to align vaccination documentation requirements with ARM 37.114.703: Requirements for Adequate Documentation of Immunization Status, which applies to immunization of school children. The proposed rule would clarify the acceptable forms of documentation and remove the requirement that school-age children attending public school provide immunization documentation to out-of-school-time providers. This would simplify the documentation requirements for a parent or guardian and make it easier for out-of-school-time providers to verify immunization status, which reduces burden on those child care providers and could increase overall capacity. The department believes these changes are necessary to simplify documentation requirements for parents and guardians because the same document could be used when a child who is in child care transitions into a school setting.

NEW RULE LXVII: EXAMINATION AND AUDIT OF OFFICIAL CHILD IMMUNIZATION RECORDS

The department proposes to add a rule clarifying that the department and local health authority representatives can audit child immunization records. This proposed requirement would align with federal requirements that child immunization records are verified during the annual inspection process.

NEW RULE LXVIII: IMMUNIZATION STATUS AS A CONDITION OF ATTENDANCE

The department proposes to clarify the immunization statuses that allow children to continue to attend a licensed or registered child care facility. The proposed rule adds language related to religious exemptions. This aligns with SB 215 from the 2021 Montana legislative session and the changes made through NEW RULES LXIV, LXV, and LXVI. This would additionally provide clear and concise standards for child care providers and parents.

Staff Qualifications and Training.

The department proposes to repeal ARM 37.95.102, 37.95.103, 37.95.162, 37.95.163, 37.95.622, 37.95.624, 37.95.703, 37.95.704, and 37.95.1170

NEW RULE LXIX: QUALIFICATION AND TRAINING DEFINITIONS

The proposed rule would edit, add, and delete definitions from ARM 37.95.102, related to staff qualifications and training. These proposed definitions would align with the proposed rules on child care staff and training, including the new licensing track for out-of-school-time providers with its focus on caring for school-age children, in comparison with the current terminology focused primarily on early childhood educators.

NEW RULE LXX: PROGRAM STAFFING

The proposed rule pulls content from ARM 37.95.103, 37.95.620, 37.95.704, and 37.95.1170, and clarifies which staff members can provide direct care and count toward compliance with child-to-staff ratio requirements. The proposed rule would

eliminate the duplicative staffing requirements from multiple rules, making the rule easier to find and understand while also reducing barriers to entry to the child care profession.

NEW RULE LXXI: DIRECTOR OR OWNER RESPONSIBILITIES AND QUALIFICATIONS

The proposed rule would combine content from ARM 37.95.624, 37.95.703, and 37.95.1170, to consolidate director or owner responsibilities and qualifications into one rule. The proposed rule would include streamlined qualifications allowing for increased diversity in this role, which is needed to accommodate the broad array of professionals and program settings. This proposed change responds to feedback provided by stakeholders through the child care licensing assessment process. It would allow individuals with elementary teacher licenses, 35 years of experience but no college degree, significant background in Montessori education, or with many other combinations of education, skills, and experience to meet the requirements to serve in the role as the director or owner of a child care facility. This is important and necessary to grow Montana's child care system and workforce, which is essential to increase its child care capacity.

NEW RULE LXXII: SITE DIRECTOR RESPONSIBILITIES AND QUALIFICATIONS

The proposed rule would add site director as a new staff role, which supports multi-site providers, including out-of-school-time providers. Through the child care licensing assessment process, stakeholders conveyed to the department that this role was needed to accurately represent their staffing models. The education, training, other licensure, and experience qualifications for the role of site director would follow the model established in NEW RULE LXXI with respect to the required qualifications of a child care program owner or director. This proposed rule is further designed to support a diverse, qualified child care workforce and to expand Montana's child care capacity.

NEW RULE LXXIII: LEAD TEACHER RESPONSIBILITIES AND QUALIFICATIONS

The proposed rule would combine content from ARM 37.95.622, 37.95.704, and 37.95.1170, to consolidate lead teacher responsibilities and qualifications in one rule. The proposed rule changes the title of the position from "early childhood lead teacher" to "lead teacher," to incorporate the different needs of all lead teachers, including out-of-school-time program lead teachers who would not care for children in early childhood. As with NEW RULE LXXII, the education, training, other licensure, and experience qualifications for the role of lead teacher would follow the model established in NEW RULE LXXI with respect to the required qualifications of a child care program owner or director. As there, this proposed rule is further designed to support a diverse, qualified child care workforce and expand Montana's child care capacity.

NEW RULE LXXIV: ASSISTANT TEACHER RESPONSIBILITIES AND QUALIFICATIONS

The proposed rule would combine content from ARM 37.95.622 and 37.95.704, to consolidate assistant teacher responsibilities and qualifications in one rule. The

proposed rule would provide a consistent qualifying age for this role of 16. As with NEW RULE LXXIV, the proposed rule would remove "early childhood" from the title of the role to be inclusive of assistant teachers in out-of-school-time programs.

NEW RULE LXXV: SUBSTITUTE RESPONSIBILITIES AND QUALIFICATIONS
This proposed rule would incorporate content from ARM 37.95.162 and 37.95.622, in modified form, to provide a consolidated and concise rule for substitutes across all staff roles.

NEW RULE LXXVI: TRAINEE RESPONSIBILITIES AND QUALIFICATIONS
This proposed rule would incorporate content from ARM 37.95.622 and 37.95.704, in modified form, to provide a consolidated and concise rule for trainees. The proposed rule would extend the time a staff member can be a trainee from 30 to 90 days in order to allow more time to complete required trainings. This change is proposed in response to child care licensing assessment findings.

NEW RULE LXXVII: SUPPORT STAFF QUALIFICATIONS
The proposed rule would add new requirements related to support staff. The proposed rule would clarify and ease understanding of required qualifications for support staff, as well as align with federal regulatory requirements.

NEW RULE LXXVIII: VOLUNTEER QUALIFICATIONS
The proposed rule would add new requirements related to volunteers. It would clarify qualifications for volunteers, aligning them with federal regulatory requirements. The feedback provided by child care programs during the child care licensing assessment process indicated a need for clarity about volunteer roles and responsibilities; the proposed rule is intended to provide the requested clarification.

NEW RULE LXXIX: ORIENTATION TRAINING
The proposed rule would incorporate content from ARM 37.95.163, in modified form, and provide concise information on who is required to complete orientation training, when, and what the training must cover.

NEW RULE LXXX: ANNUAL TRAINING
The proposed rule would incorporate requirements from ARM 37.95.162. It would clarify and streamline annual training requirements for staff with respect to each child care license or registration type. The proposed changes are intended to support a broader diversity of annual training options aligned with providers' specific needs, including training focused on school-age children or more advanced training options for experienced educators.

NEW RULE LXXXI: HEALTH AND SAFETY REFRESHER COURSE
The proposed rule incorporates content from ARM 37.95.162, in modified form, to clean up and clarify current rule language.

Background Checks

The department proposes to repeal ARM 37.95.103, 37.95.106, 37.95.108, 37.95.110, 37.95.161, 37.95.173, 37.95.176, 37.95.704, and 37.95.1110.

NEW RULE LXXXII: BACKGROUND CHECK DEFINITIONS

The department proposes to group definitions related to background checks in this proposed rule, immediately before the substantive rules on background checks, in a new subchapter on the subject. In the proposed rule, some new definitions have been proposed. The intent of this proposed reorganization of definitions is to increase readability and useability of the rules by offering providers, staff, and families clear definitions of the terms used in connection with background checks immediately before the rules in which the terms are used.

NEW RULE LXXXIII: FINGERPRINT AND BACKGROUND CHECKS

The department proposes to combine and condense content from ARM 37.95.103, 37.95.106, 37.95.110, 37.95.161, and 37.95.704, related to background checks for all adults in child care facilities. The proposed rule would clarify who is required to receive a background check and the frequency of each type of required background check. This would streamline expectations and timelines for new staff hires and staff renewals, which may decrease the burden of hiring and retaining staff. These proposed changes align with the child care licensing assessment findings, and would ensure that the state requirements are aligned with federal regulatory requirements.

NEW RULE LXXXIV: BACKGROUND CHECK RESULTS THAT MUST RESULT IN THE DENIAL OF AN APPLICANT

The department proposes to clarify the background check results that must lead to a determination that an individual is ineligible to be employed or present in a child care setting. The proposed rule does not include two crimes – prostitution and burglary – that are currently listed in ARM 37.95.176, but do not meet the federal definition of crimes for which an application must be denied, and includes two new crimes – arson and misdemeanor partner/family member assault when the victim is a minor. This proposed change would align the state's rules with the federal regulatory requirements that felony and serious misdemeanor crimes impacting a victim's physical or emotional well-being constitute crimes that must make an individual ineligible to work or be present in a child care facility. These proposed changes would align the state regulations with the minimum federal requirements.

NEW RULE LXXXV: BACKGROUND CHECK RESULTS THAT MAY RESULT IN THE DENIAL OF AN APPLICANT

The department proposes to clarify when/whether background check results permit the department discretion in determining if an individual is ineligible to be employed or present in a child care setting. The proposed rule would add two crimes – prostitution and burglary -- and would add being named in a founded report of child abuse or neglect. The proposed rule would clarify that being named a perpetrator in a founded report of child abuse or neglect cannot be the sole reason for denying an application based on the background check. The addition of prostitution and burglary would align with federal requirements that misdemeanor crimes impacting a

victim's physical or emotional well-being could make an individual ineligible to work or be present in a child care facility. These proposed changes, thus, align the state regulations with the minimum federal requirements, while also providing the state discretion to evaluate each case on an individual basis before denying someone employment.

NEW RULE LXXXVI: OFFENSES THAT ARE PENDING RESOLUTION

The department proposes to clarify that an individual charged with a crime that must make them ineligible to be present in a child care facility under the proposed rule, must be excluded from the child care facility, during the times child care is being provided, pending the resolution of the criminal charges. The proposed rule would clarify existing language in ARM 37.95.173, and provide increased clarity for providers and individuals in their households regarding pending criminal cases. The department believes that the proposed changes are necessary to balance the department's responsibility to help ensure children are safe in child care facilities with the understanding that criminal charges are not an adjudication of guilt. The department also believes the proposed exclusion requirement during child care hours protects children without arbitrarily excluding a person from a place where it is otherwise lawful for them to be.

NEW RULE LXXXVII: PROCESS TO REQUEST ADMINISTRATIVE RECONSIDERATION OF BACKGROUND CHECK RESULTS AND DEPARTMENT DETERMINATION

The department proposes to clarify and ease the process for requesting a correction of inaccurate background check results. The proposed rule would explain the difference between requesting correction of inaccurate information and requesting a reconsideration based on evidence of rehabilitation from crimes that otherwise result in a determination of ineligibility due to a may deny background check finding. These proposed changes are intended to clarify, for providers and staff, who can request reconsideration, which may streamline the staff hiring process. It would also protect staff privacy by giving staff more of a role in requesting a reconsideration. Considering ongoing child care workforce shortages, the department also believes these changes are necessary to prevent situations where an otherwise qualified child care applicant is not hired because of inaccurate criminal justice information, or where the applicant has been rehabilitated.

Investigations, Corrective and Negative Licensing Actions

The department proposes to repeal ARM 37.95.103, 37.95.106, 37.95.108, 37.95.154, 37.95.176, and 37.95.730.

NEW RULE LXXXVIII: COMPLAINTS AND INVESTIGATIONS

The proposed rule would incorporate content from ARM 37.95.103, 37.95.106, 37.95.108, 37.95.154, and 37.95.730, in modified form, to provide one location in which to establish complaint and investigation processes. Having one concise rule should make the process more understandable and establish clear guidelines for providers and the department.

NEW RULE LXXXIX: LICENSING OR REGISTRATION CORRECTIVE ACTION
The department proposes this new rule to provide clarity on the corrective action process. These proposed changes are intended to give notice to child care providers on corrective action plan content, and on the process by which providers could submit additional information to the department in the event of a contested deficiency. These proposed changes would also provide an opportunity for child care providers and the department to collaborate and resolve alleged violations early in the process, preventing the elimination of critical child care slots.

NEW RULE XC: TIME PERIOD FOR CORRECTING A VIOLATION
This proposed rule would establish the basis on which the department would determine the time period for correcting a licensure or registration violation.

NEW RULE XCI: DENIAL, SUSPENSION, REVOCATION, OR MODIFICATION OF A LICENSE OR REGISTRATION
The proposed rule would adopt text from ARM 37.95.176 to establish the process for denying, suspending, revoking, or modifying a child care license or registration. The proposed rule supports RRI through shorter, clearer, easier-to-locate rules.

NEW RULE XCII: VIOLATIONS THAT MAY RESULT IN NEGATIVE LICENSING OR REGISTRATION ACTION
The proposed rule would adopt language from ARM 37.95.176 and provide clarity on the violations that can result in negative licensure or registration action. The current rule is substantively similar, but is drafted in a way that causes confusion. The proposed rule does not include duplicative violations, reducing the length and increasing the readability of the rule.

NEW RULE XCIII: NOTICE OF LICENSE OR REGISTRATION DENIAL, SUSPENSION, OR REVOCATION
This proposed rule would provide clear notice that denial, suspension, or revocation of a license or registration is an adverse department action and that affected registrants or applicants have the right to an administrative hearing and appeal procedures.

NEW RULE XCIV: ISSUING A PROBATIONARY LICENSE OR REGISTRATION
The proposed rule would update ARM 37.95.176(4), creating one rule about probationary licenses. The proposed rule would also shift the notification requirements from the department to the child care provider, which would support provider-family relationships.

NEW RULE XCV: PROVIDING UNLICENSED CARE
This proposed rule would clearly establish the roles and responsibilities of the department with respect to an unlicensed provider that is not license-exempt (is operating illegally). Under the proposed rule, CCL staff would be able to send a notice to the illegally operating provider, support the provider in becoming licensed, and notify the department attorney, county attorney, or attorney general, as

necessary to address any continued wrongdoing. CCL staff cannot take additional steps beyond those outlined in 52-2-741, MCA.

NEW RULE XCVI: REAPPLICATION AFTER DENIAL, SUSPENSION, OR REVOCATION

The proposed rule would adopt, in modified form, content from ARM 37.95.175, to clarify whether and when applicants, licensees, and registrants can reapply for a license or registration after a negative action. It would allow reapplication to occur immediately if the denial is a result of incomplete information, changing the current requirement of a year suspension prior to any action on a reapplication. The department believes that the current rule arbitrarily precludes, among other things, applicants denied a license or registration due to incomplete information from reapplying for a year after denial. This proposed change is needed to remove a punitive exclusion when the applicant has not done anything wrong. The new rule would also separate the consequences of suspension from those of revocation, which are currently combined, as well as eliminate an unnecessary barrier to offering needed child care services.

NEW RULE XCVII: FAIR HEARING

This proposed new rule would clarify the fair hearing process for an applicant, licensee, or registrant.

Fiscal Impact

The department does not anticipate any fiscal impact associated with these proposed rule amendments.

6. The department intends to adopt the new rules effective upon the day after the date of publication of the adoption notice.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., December 2, 2022.

8. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or

delivered to the contact person in 7 above or may be made by completing a request form at any rules hearing held by the department.

10. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

11. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

12. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and repeal of the above-referenced rules will significantly and directly impact small businesses.

The department believes the proposed rules offer options to child care providers as small businesses to increase revenue and increase the number of child care providers in Montana. A child care provider, as a small business, can determine the number of children served up to the child care program's approved capacity. The department proposes an increase in the child-to-staff ratio and maximum capacity for school-age children. The department proposes to add flexibility to space, both indoor and outdoor, to encourage new and diverse child care provider options to families in Montana.

/s/ HEIDI SANDERS
Heidi Sanders
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State October 25, 2022.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through VI and the repeal of ARM 38.5.2001, 38.5.2002, 38.5.2003, 38.5.2004, 38.5.2005, 38.5.2006, 38.5.2007, 38.5.2008, 38.5.2009, 38.5.2010, 38.5.2011, 38.5.2012, 38.5.2016, 38.5.8201, 38.5.8202, 38.5.8203, 38.5.8204, 38.5.8209, 38.5.8210, 38.5.8211, 38.5.8212, 38.5.8213, 38.5.8218, 38.5.8219, 38.5.8220, 38.5.8221, 38.5.8225, 38.5.8226, 38.5.8227, and 38.5.8229 pertaining to resource planning	)	AMENDED NOTICE AND EXTENSION OF COMMENT PERIOD ON PROPOSED ADOPTION AND REPEAL

TO: All Concerned Persons

1. On July 22, 2022, the Department of Public Service Regulation published MAR Notice No. 38-5-256 pertaining to the public hearing on the proposed adoption and repeal of the above-stated rules at page 1229 of the 2022 Montana Administrative Register, Issue Number 14.

2. The Department of Public Service Regulation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Service Regulation no later than 5:00 p.m. on November 28, 2022, to advise us of the nature of the accommodation that you need. Please contact the Department of Public Service Regulation, 1701 Prospect Avenue, Helena, Montana, 59620-2601; telephone (406) 444-6199; fax (406) 444-7618; or e-mail pschelp@mt.gov.

3. The new rules proposed to be adopted are being amended from the original proposal as follows, new matter underlined, deleted matter interlined:

NEW RULE I GOAL AND POLICY (1) Integrated least-cost resource planning and acquisition is an ongoing, dynamic, and flexible process that:

(a) manages the consequences of risk and uncertainty;

(b) integrates demand-side, distribution-side, ~~supply-side~~ and power resources to minimize the long-term total cost of service;

(c) considers a broad range of attributes in the evaluation of alternative resources and their cost-effectiveness;

(d) engages stakeholders and the public; and

(e) is transparent and reasonably understandable to stakeholders, the public, and the commission.

(2) The goal of integrated least-cost resource planning and acquisition is to ensure public utilities meet their customers' needs for adequate, reliable, and efficient energy services at the lowest long-term total cost while managing risks and remaining financially sound. To achieve this goal, utilities ~~should~~ shall plan to meet future customer demand and energy requirements through timely acquisition of a diverse mix of cost-effective resources, and ~~should~~ shall actively pursue and acquire all cost-effective demand-side resources. The cost-effectiveness of all resource acquisitions will ~~should~~ be evaluated with respect to long-term ~~societal~~ total costs, including scenarios based on societal costs.

(3) These rules implement the policy of the State of Montana concerning integrated least-cost resource planning and acquisition. Electric utilities are required to file resource plans and ~~should~~ conduct planning and acquisition processes as outlined in the rules.

(4) The rules implement the commission's regulatory objective of ensuring an efficient allocation of society's resources to provide ~~the provision of~~ adequate, reliable electricity services and just and reasonable rates for consumers. In furtherance of this objective, utilities shall ~~should~~ operate existing resources and acquire new resources only when needed and in a manner consistent with these rules.

(5) The rules ~~provide public utilities guidance on~~ establish requirements for resource planning and acquisition processes but do not specify planning and acquisition outcomes or mandate investment decisions. The rules identify ways for utilities to reduce and manage the risk of resource acquisition to shareholders, customers, and society.

(6) Utilities shall acquire resources through transparent, independently administered competitive resource solicitations whenever practicable, subject to 69-3-1207, MCA.

~~(6)~~(7) Integrated least-cost resource planning consistent with the rules may demonstrate that previously rate-based resources should be abandoned and replaced by new resources. If such situations occur, ~~a utility or~~ the commission ~~may initiate separate proceedings to~~ will determine the appropriate recovery of undepreciated, rate-based capital costs in separate, contested case proceedings.

~~(7)~~(8) Evaluations of potential demand-side resources ~~should~~ shall consider those resources cost-effective up to 110 percent of the utility's long-term avoided cost.

~~(8)~~(9) Resource decisions have a significant impact on the public. Public utilities can best meet the respective goals of shareholders, customers, and society by meaningfully involving the public in resource planning and acquisition processes. The rules facilitate such involvement by requiring public utilities to conduct transparent planning and acquisition processes and thoroughly document the results of those processes in a manner that is reasonably understandable.

AUTH: 69-3-1204, 69-3-1206, MCA
IMP: 69-3-1204, 69-3-1205, 69-3-1206, 69-3-1207, 69-3-1209, MCA

NEW RULE II DEFINITIONS (1) "Action plan period" means the five-year period beginning with the calendar year after the filing of a resource plan.

(2) "Adequate" means, with respect to an electric system owned or controlled by a utility, the ability to supply the aggregate electrical demand and energy requirements of the utility's customers at all times, taking into account scheduled and reasonably expected unscheduled outages of system elements.

(3) "Affiliate" means, for purposes of this rule, a person or organization officially attached to a utility through common ownership, common management, or the existence of a contract.

~~(3)~~ (4) "Assessment" means a documented process used by a utility to make informed judgments regarding elements of a resource plan and action plan based on the careful consideration of quantitative and qualitative information and the input of stakeholders, the public, and the advisory committee required in 69-3-1208, MCA.

~~(4)~~ (5) "Cost" means the actual or forecast costs incurred to own, operate, and manage existing ~~resources~~ and ~~procure~~ potential new resources sufficient to provide adequate and reliable services over the planning period including, but not limited to, costs for:

(a) capital recovery;

(b) shareholder returns;

(c) debt;

(d) operations and maintenance;

(e) fuel and associated fuel delivery services or infrastructure;

(f) insurance;

(g) taxes, including tax credits;

(h) environmental remediation;

(i) permitting;

(j) land use and rights of way;

~~(i)~~ (k) decommissioning, abandonment, and securitization;

~~(j)~~ (l) contractual power purchases, however structured;

~~(k)~~ (m) incremental transmission and distribution, including losses and congestion;

~~(l)~~ (n) administration; and

~~(m)~~ (o) externalities.

~~(5)~~ (6) "Cost-effective" means that a project or resource is forecast:

(a) to be reliable and available within the time it is needed; and

(b) to meet or reduce the electric power demand of the intended consumers at an estimated incremental system cost no greater than that of the least-cost similarly reliable and available alternative project or resource, or any portion thereof.

~~(6)~~ (7) "Environmentally responsible" means explicitly recognizing and incorporating into resource plans, resource planning processes, and resource procurement the policy of the State of Montana to encourage utilities to acquire resources in a manner that will help ensure a clean, healthful, safe, and economically productive environment.

~~(7)~~ (8) "Externalities" has the meaning in 69-3-1203(6), MCA.

(9) "Long-term" means a time period at least as long as the planning period.

~~(8)~~ (10) "Planning period" has the meaning in 69-3-1203(9), MCA.

~~(9)~~ (11) "Qualifying facility" means a resource as defined in 18 CFR part 292.101, and certified by the Federal Energy Regulatory Commission.

~~(10)~~ (12) "Reliable" means a power system that is adequate and can withstand sudden disturbances, such as electrical short circuits or unanticipated loss of system elements.

~~(11)~~ (13) "Resources" includes all of the following:

(a) "Demand-Side resources" means any material, device, technology, educational program, rate design, practice, or facility alteration designed to result in reduced peak demand, increased energy efficiency, energy conservation, or shifting or management of electricity demand and energy consumption and includes combined heat and power used to displace space heating, water heating, or another load.

(b) "Distribution-Side resources" means electrical generation or storage equipment located within a utility's distribution system, including real and personal property owned and controlled by utility customers and non-utility producers.

(c) "Power resources" means wholesale power transactions, including bilateral contracts, tolling agreements, and spot purchases, and plants and equipment, including storage equipment, owned, leased, or controlled, in whole or in part, by a utility.

~~(12)~~ (14) "Service" means required and optional electricity and/or electricity-related products or services provided by a utility to retail customers including metering, billing, distribution, transmission, generation, and generation-related services. Services include, but are not limited to, traditional electricity supply and delivery service, renewable energy-sourced offerings, interconnection and integration of distribution side and customer generators, net metering, demand and/or bill management programs, information-based services such as energy audits, transmission ancillary services, street lighting services, and other services for which a utility has filed or would be required to file a tariff.

~~(13)~~ (15) "Societal cost" means all costs to a utility plus externalities.

~~(14)~~ (16) "Stakeholder" means a member of the public (individual, corporation, organization, group, etc.) who may have an interest in, or may be affected by, these rules.

AUTH: 69-3-1204, 69-3-1206, MCA
IMP: 69-3-1204, 69-3-1205, 69-3-1206, 69-3-1207, 69-3-1209, MCA

NEW RULE III PLAN CONTENTS (1) Resource plans shall contain at least the following information:

(a) A description of any changes a utility has made to the content of its plan or its planning process in response to the commission's comments on its last plan and how the changes affect the current plan, along with reasoned explanations for any commission comment with which the utility disagrees. Cross-references ~~should~~ shall be provided for all ~~substantial~~ changes.

(b) Annual electricity demand and energy forecasts for each year of the planning period for each major rate or service class; ~~,~~ an explanation of the forecasting method(s) and assumptions; and the historical customer counts, population data, load data, and end-use data used in the forecasting process, as applicable. Changes to the forecasting method(s) and assumptions used in the prior plan must be thoroughly explained.

(c) A description and graphical presentation of daily and seasonal electric demand and energy requirements for each major rate or service class, the variability of those requirements, and how the utility assessed historical trends, and the potential for future changes in the timing and variability of electric demand and energy requirements in the development of the plan.

(d) A description of the electric generating capability and characteristics of each of the utility's existing resources. The description ~~should~~ must include the generator type and fuel source, nameplate capacity, effective load carrying capability or other probabilistic capacity contribution estimate, expected annual energy production, storage capability, capacity factor, forced outage rate, annual emissions of carbon dioxide, online date, and expected retirement date. The description must include any historical data used to develop the reported generating capabilities and characteristics. The description may be in table form with accompanying explanatory text, as necessary.

(e) A description of the current average annual variable cost or contract price for each of the utility's existing power resources, including storage resources, and the expected or projected average annual variable cost or contract prices at 5-year increments for the planning period. The description may be in table form with accompanying explanatory text, as necessary.

(f) A description of the aggregate load-serving capability and characteristics of existing programmatic demand-side resources within the utility's system and a forecast of aggregate capability over the planning period. The description ~~should~~ must address each demand-side resource program offered and its total load-serving capabilities. The description may be in table form with accompanying explanatory text, as necessary. The description ~~should~~ must provide the following historical information for each year since the utility's last plan:

(i) program expenditures;

(ii) incentive payments;

(iii) demand and energy savings and the methods and assumptions used to estimate the savings;

(iv) measures of the cost-effectiveness of the program, including avoided costs, and the techniques used to estimate those costs;

(v) annualized cost of saved energy and capacity and the techniques used to estimate those costs; and

(vi) ~~the methods used to estimate those costs; and~~

~~(vii)~~ estimates of the net economic benefit of the programs.

(g) ~~An assessment of the~~ A resource adequacy assessment based on ~~of~~ existing resources and a description of the nature of the need for additional resources to achieve industry-standard adequacy standards or reserve margin requirements. The plan must completely and thoroughly describe the method(s) and assumptions used in the assessment, including the basis for the adequacy standard or reserve margin requirement and computer modeling and model validation procedures. The assessment ~~should~~ must document energy and capacity deficits, ~~and~~ their duration, frequency, and timing, given the energy and demand forecasts in (b) and resource capabilities in (d) and (f). In addition, the assessment ~~should~~ must document energy and capacity deficits for scenarios that involve higher and lower forecasts of energy and demand requirements; alternative energy and demand load

profiles; and alternative performance levels for existing resources to account for the effects of, among other things, extreme weather events; demand-side and distribution-side resources; electrification; and price response.

(h) A description of a wide range of plausibly cost-effective resources that could be acquired to satisfy the need for additional resources identified in the results of the resource adequacy assessment in (g), including those that may become available through transmission system investments that enhance access to broader markets for power resources. The description ~~should~~ shall include the electricity generating or load serving capabilities and characteristics of the resources including the technology~~,~~; size~~,~~; service ~~of~~ life or contract length~~,~~; performance attributes~~,~~; costs including estimates of potential fuel delivery infrastructure and transmission system interconnection and network upgrade costs, and tax credits; and environmental impacts including water and land use and emissions. The description must explain the method(s) and assumptions used to identify potential resources and define their costs, generation or load serving capabilities, and other attributes. The description may be in table form with accompanying explanatory text, as necessary.

(i) An evaluation of the full range of cost-effective means of combining the resources in (h) with the continued or discontinued operation of existing resources to satisfy the need for additional resources identified in (g) at the lowest long-term total cost. The evaluation must consider a broad range of future customer electricity demand and energy requirements and risks related to uncertainty about future loads, resource costs and performance, and changes in public policy and environmental regulations. The evaluation must be designed to allow for a comparison of the long-term total costs and risks of acquiring alternative resources, or combinations of resources, to address the need identified in (g). The evaluation must include at least two scenarios that rely on increased renewable energy resources and demand-side resources pursuant to 69-3-1204(2)(a)(vi), MCA. The plan must completely and thoroughly describe the results of the evaluation and document and justify the method(s) and assumptions used in the evaluation, including method(s) and assumptions used to determine cost-effectiveness and computer modeling and model validation procedures.

(j) For computer modeling used to perform the evaluation in (i):

(i) a thorough description of the basic design and purpose of the model;

(ii) a thorough description of the inputs and how the model uses inputs to produce outputs;

(iii) a thorough description of the decisions that were informed by the modeling and questions that were examined or answered by the modeling;

(iv) sufficient information on modeling inputs and outputs to reasonably permit alternative modeling in another program; and

(v) sufficient explanation of the modeling results to enable the commission and stakeholders to understand the results.

~~(j)~~ (k) A description of the utility's plan for demand-side resource acquisition over the planning period, to the extent such resources are not directly included in the evaluation in (i). The description ~~should~~ must include the utility's assessment of the cost-effective demand-side resource potential on its system, including the method(s) and assumptions used to determine cost-effectiveness.

~~(k)~~ (l) A description of the advisory committee required in 69-3-1208, MCA, ~~and~~ a complete and thorough documentation of how the utility designated members and engaged the advisory committee to review and evaluate technical, economic, and policy issues related to the utility's system and the planning process, including all ~~substantial~~ recommendations of the advisory committee and the utility's responses, and a copy of the work plan required in [NEW RULE IV].

~~(l)~~ (m) A description of the public meetings conducted pursuant to 69-3-1205(1), MCA, including a summary of comments, concerns, or other input received and how ~~they were considered~~ the utility responded.

~~(m)~~ (n) A description of the comments received on the draft plan published pursuant to [NEW RULE IV] and how they were considered, including a thorough description of modifications made to the draft plan in response to the comments or the reasons for making no modifications.

~~(n)~~ (o) A near-term action plan describing the steps the utility intends to take based on the results and conclusions of the planning process, including the evaluations in this rule. The action plan must describe the process the utility intends to use to acquire any resources or resource types, including the use of competitive solicitations.

~~(o)~~ (p) A description of how information about the mix of resources used to provide the demand and energy requirements of customers will be disseminated to them, including information about emissions and other environmental impacts, using itemized labeling, reporting, or other mechanisms as appropriate.

(2) Plans that do not satisfy the requirements of this rule and 69-3-1204(2)(b), MCA will be deemed deficient and returned to the utility pursuant to 69-3-1204(3), MCA.

AUTH: 69-3-1204, MCA
IMP: 69-3-1204, 69-3-1205, 69-3-1206, 69-3-1207, 69-3-1208, 69-3-1209, MCA

NEW RULE IV PLANNING PROCESS (1) A utility shall designate and engage with an advisory committee according to 69-3-1208, MCA. The utility shall meet with the advisory committee on a regular basis as it prepares resource plans. Utilities ~~are encouraged to~~ shall open meetings with the advisory committee to the public whenever possible, but may ~~hold private~~ close meetings or portions of meetings when proprietary information is discussed or when necessary to enable the ~~utility to obtain from the~~ committee to provide a more complete review, evaluation, or recommendation. A utility ~~should~~ shall engage with the committee before deciding to close a meeting to the public.

(2) In addition to the advisory committee, a utility ~~should~~ shall engage stakeholders and the public during the process of preparing a resource plan. A utility ~~should~~ must publicly notice engagement events at least 14 days in advance and provide meeting materials in advance to the greatest extent possible. A utility ~~should~~ shall present to stakeholders in a transparent, understandable manner the results of completed steps in the planning process and plans for subsequent steps and ~~should~~ shall provide an opportunity to comment on or request items to be addressed in a plan. A utility may combine meetings with the public, stakeholders, and the advisory committee.

(3) A utility ~~should~~ shall engage a broad cross-section of its customers (based on demographic, geographic, and service classification characteristics), including representatives of customer segments with low, moderate, and fixed incomes and highly impacted communities, on issues related to future service and resources that may be of interest to non-experts.

(4) At the start of each planning cycle, a utility ~~should~~ shall engage with the advisory committee and stakeholders to develop a work plan and timeline, including the frequency of meetings with the advisory committee, for completing the assessments and preparing plan contents required in [NEW RULE III]. The work plan must include a structured process for submission of written inquiries and comments to the utility during the planning process and written responses by the utility. The work plan shall also address procedures for access by the advisory committee to the utility's planning model during the planning process.

(5) A utility shall publish a draft of its resource plan at least ~~45~~ 70 days before filing the resource plan with the commission and accept comments on the draft resource plan for at least ~~30~~ 55 days.

(6) A utility shall file a resource plan every three years.

AUTH: 69-3-1204, MCA
IMP: 69-3-1204, 69-3-1205, 69-3-1208, MCA

NEW RULE V RESOURCE PROCUREMENT (1) A utility's resource procurement processes ~~should~~ shall be guided by the policy in 69-3-1202, MCA, input from the public and the advisory committee provided for in 69-3-1208, MCA, and comments of the commission on the utility's most recent resource plan.

(2) Utilities shall use transparent, independently administered ~~C~~competitive solicitations ~~should be considered the preferred method of acquiring~~ to acquire needed resources whenever practicable, subject to 69-3-1207, MCA, and the Commission's rules. Utilities shall document decisions regarding the types of procurement processes used for later submission in applications for rate recovery where the prudence of procurement processes and resource decisions is examined.

~~(2)~~ (3) A utility shall notify the commission of a decision to issue a competitive solicitation. The notice shall precede release of a draft of the solicitation by at least 20 days. Before issuing the solicitation, the utility shall submit a draft of the solicitation to the commission in accordance with 69-3-1207, MCA, with a thorough description of the input and recommendations of ~~its~~ the advisory committee regarding the solicitation process and how the utility modified the solicitation process in response to the advisory committee's input and recommendations or, alternatively, the basis for not modifying the process. Upon notification of a utility's intent to issue a solicitation, the commission will open a docket for purposes of receiving the draft solicitation and accepting public comment on the draft solicitation. The commission shall provide notice to the public of the receipt of the draft solicitation and provide 45 days for interested persons to file written comments. The utility shall not issue the final solicitation until at least ~~45~~ 70 days after submitting the draft solicitation. Upon issuing the final solicitation, the utility shall concurrently submit the solicitation to the commission in the docket assigned to the draft solicitation.

(4) A utility shall provide all proposed and final scoring criteria and metrics in the draft and final competitive solicitations filed with the Commission.

~~(3)~~ (5) Utilities ~~should~~ shall consider the usefulness of competitive solicitations for identifying and acquiring demand-side and distribution-side resources, but should also leverage their unique knowledge of their customers' demand characteristics to evaluate cost-effective resource potential and design programs for ~~its~~ acquisition.

AUTH: 69-3-1204, MCA
IMP: 69-3-1204, 69-3-1205, 69-3-1207, 69-3-1208, 69-3-1209, MCA

NEW RULE VI ~~GUIDELINES~~ REQUIREMENTS FOR COMPETITIVE SOLICITATIONS (1) A competitive solicitation issued by a utility shall treat similarly situated bidders similarly and fairly, use understandable processes, and result in decisions and outcomes that are transparent and understandable to bidders, stakeholders, and the commission.

~~(1)~~ (2) A competitive solicitation issued by a utility shall ~~should~~ contain:

(a) specific minimum bidder requirements for credit and capability;

(b) standard form contracts or contract provisions the utility intends to use;

(c) specific explanations of bidders' ability to negotiate mutually agreeable final contract terms that are different from the standard form contracts;

(d) clear and complete descriptions of the resources, products, and services the utility seeks to acquire;

(e) a description of how the solicitation aligns with a resource need shown by the utility's most recent resource plan or a subsequently identified need resulting from a change in circumstances;

(f) specific bid evaluation and bidder qualification standards and criteria including a sample evaluation rubric that quantifies, where possible, the weight the utility will give each criterion during the bid ranking procedure; and

(g) clear and complete descriptions of how the utility will share information about bid scores, including what information about the bid scores and bid ranking will be provided to bidders and when and how it will be provided.

~~(2)~~ (3) A utility's process for evaluating offers or bids in competitive solicitations ~~should~~ shall:

(a) apply bidder qualification standards and bid evaluation criteria fairly and consistently;

(b) allow all bidders to adjust their bids in the event the utility or third-party administrator revises any evaluation standards or criteria;

(c) apply a transparent and systematic rating methodology to objectively rank bids with respect to price and, as appropriate, non-price ~~attributes~~ factors. Non-price factors must be objectively quantifiable where practicable. The rating methodology ~~should~~ shall be based on information and analyses from a utility's most recent resource plan, any commission comments on the plan, input from the advisory committee, public comments on the utility's draft solicitation, if applicable input from a third-party administrator, and industry best practices;

(d) use the following approach to develop price and non-price scores:

(i) price scores must be based on the prices submitted by bidders and calculated using units that are appropriate for the resources, products, or services

sought and technologies expected to be employed in responsive bids. A third-party administrator may adjust price scores on review of information submitted by bidders;

(ii) non-price scores must, when practicable, primarily relate to resource characteristics identified in the utility's most recent resource plan or supplement to the plan and may be based on conformance to standard form contracts. Non-price scoring criteria must be based on a clear, objective rubric that reasonably enables bidders to self-score;

(iii) non-price score criteria that seek to identify minimum thresholds for a successful bid and that may readily be converted into minimum bidder requirements must be converted into minimum bidder requirements;

(iv) scoring criteria may not be based on renewal or ownership options, except insofar as these options affect costs, revenues, benefits, or prices. Any criteria based on renewal or ownership options must be explained in sufficient detail in the solicitation to allow for public comment and Commission review of the justification for the proposed criteria;

~~(d)~~ (e) document subjective judgments of the utility or the third-party administrator regarding bid scoring and ranking with sufficient detail to enable the utility to demonstrate in a transparent, understandable manner the decision-making process in subsequent regulatory proceedings involving rate recovery;

~~(e)~~ (f) identify a shortlist of offers from bidders with which the utility will pursue contract negotiations. Due diligence regarding bidder qualifications, bidder credit worthiness and experience, and project feasibility ~~should~~ shall be completed before selecting an offer for the shortlist. A bidder shall ~~should~~ not be informed that its offer is being considered for the shortlist while the utility is performing due diligence. If any bidders on the shortlist are allowed to refresh or supplement their bids in any way, all bidders on the shortlist ~~should~~ shall be allowed to do so;

(g) conduct and incorporate into the selection of a final short list a sensitivity analysis of bid rankings to evaluate the degree to which the rankings are sensitive to:

(i) changes in non-price scores; and

(ii) changes in assumptions used to compare bids or portfolios of bids, such as assumptions used to extend shorter bids for comparison with longer bids, or assumptions used to compare smaller bids or portfolios with larger ones;

~~(f)~~ (h) prevent the utility or bidders from reassigning or "flipping" offers from the original bidding entity to another entity;

~~(g)~~ (i) prevent public disclosure of information related to individual bids, including price, before the solicitation process is complete and contracts with the winning bidder(s) have been executed; and

~~(h)~~ (j) facilitate public disclosure of information about the solicitation that is not confidential as defined in ARM 38.2.5001.

~~(3)~~ (4) A utility shall obtain and consider input from the advisory committee regarding the appropriate use and selection of a third-party administrator in a competitive solicitation process, including whether the third-party administrator should be selected through a competitive solicitation. When using a third-party administrator in the competitive solicitation process, a utility shall ~~should~~:

~~(a) obtain input from its advisory committee and stakeholders regarding the appropriate use and selection of a third-party administrator, including whether a third-party administrator should be selected through a competitive process;~~

~~(b)~~ (a) consult with the third-party administrator on preparation of the solicitation~~. The third-party administrator should submit an assessment of the solicitation in the docket initiated in [NEW RULE V] concurrent with the utility's submission of the final solicitation~~;

~~(c)~~ (b) empower the third-party administrator to oversee the solicitation process to ensure that it is conducted fairly, transparently, and objectively. The utility is responsible for engaging the services of a third-party administrator and for all fees and expenses associated therewith. The utility may request recovery of fees and expenses associated with engaging a third-party administrator in customer rates; and

~~(d)~~ (c) empower the third-party administrator to:

(i) assess the reasonableness of bidder qualification and bid evaluation and scoring criteria;

(ii) evaluate bids;

(iii) select the initial shortlist; and

(iv) assess the reasonableness of the utility's final bid selection(s).

~~(4)~~ (5) If a competitive solicitation allows ~~includes~~ bids by the utility or an affiliate of the utility, or bids that may result in a resource owned by the utility, the process must be administered by an independent ~~a~~ third-party administrator. The third-party administrator must open, consider, ~~and~~ independently evaluate, and score bids received in the solicitation, ~~and score those bids and all or a sample of the remaining bids~~ and assess the unique risks and advantages of utility-owned resource options compared to contractual alternatives considering the following factors:

(a) potential for construction delays and cost over-runs (considering contractual guarantees, cost and prudence of guarantees, remaining exposure to ratepayers for cost over-runs, and potential benefits of cost under-runs);

(b) projected forced outage rates;

(c) projected end effect values;

(d) projected emissions costs;

(e) projected operation and maintenance costs;

(f) projected capital additions costs; and

(g) projected performance regarding output, heat rate, and power curve.

~~(9)~~ (6) A utility shall inquire and determine whether a bidder is an affiliate or will contract with any affiliate. When an affiliate of a utility submits an offer in the utility's competitive solicitation, the following requirements shall be incorporated into the evaluation process:

(a) Information shall not be provided to an affiliate regarding bid evaluation criteria, bidder qualification criteria, due diligence, or any other relevant resource procurement information unless the same information is simultaneously provided to all other prospective bidders.

(b) Any individual who participates in the development of the solicitation or the evaluation or scoring of bids on behalf of the utility shall not be allowed to

participate in the preparation of any offer by an affiliate or to discuss the solicitation process with an affiliate or its representatives in a non-public setting.

(c) A utility or third-party administrator shall not disclose the contents or results of a solicitation, including information about competing bids, to personnel involved in developing an offer by an affiliate unless such information has been disclosed to the public. Protections against improper disclosure of solicitation information shall be explained in solicitation documents.

~~(10)~~ (7) If a utility acquires resources involving affiliate transactions it shall be subject to the following filing requirements in any subsequent application regarding cost recovery under 69-3-301 through 69-3-310, MCA:

(a) a demonstration that the utility has not subordinated its service obligations in favor of an affiliate;

(b) a demonstration that all costs associated with any affiliate transactions are just and reasonable and in the public interest based on a lower of cost or market standard applied at the time of contract execution;

(c) a demonstration that costs and revenues are accurately and properly segregated between regulated and non-regulated affiliated entities;

(d) an affirmation that books of account and related records of any affiliate transacting business with the utility shall be available for audit and review by the commission. As reasonable and necessary and when lawful, the commission will protect affiliate information from public disclosure; and

(e) proof that a code of conduct has been implemented to guide management and other employees regarding standards for day-to-day business activities with affiliates and to guard against self-dealing, gaming, and resulting subsidies.

~~(5)~~ (8) A third-party administrator must file a closing report in the docket opened in [NEW RULE V] after the utility has determined a final shortlist. The closing report must include an overall assessment of the competitive solicitation process including whether selected resources achieve the objective of minimizing costs to customers, considering risks, and whether the process was fair to all bidders.

~~(6)~~ (9) The consumer counsel should consider the following guidelines when it decides to engage an independent monitor pursuant to 69-3-1207(4), MCA:

(a) notify the commission as soon as practicable following notice by a utility of a decision to issue competitive solicitation if the consumer counsel intends to retain an independent monitor; and

(b) provide information needed and requested by the commission to establish the process by which the commission will charge a fee to the utility to pay costs incurred by the consumer counsel related to the independent monitor.

~~(7)~~ (10) When the consumer counsel engages an independent monitor the utility and the third-party administrator shall allow access by the independent monitor to all information related to the solicitation and the evaluation of offers.

~~(8)~~ (11) An independent monitor may file comments addressing the items in 69-3-1207(4)(c), MCA and/or prepare and file a closing report pursuant to 69-3-1207(4)(c)(iv) in the docket initiated in [NEW RULE V].

~~(11)~~ (12) When a utility acquires resources by means other than a competitive solicitation, it ~~should~~ shall thoroughly document the alternative

acquisition process, including the assumptions and methods used to assess cost-effectiveness and all factors considered in, and the rationale for, its decision not to use a competitive solicitation.

AUTH: 69-3-1204, MCA
IMP: 69-3-1204, 69-3-1205, 69-3-1207, 69-3-1208, 69-3-1209, MCA

The statement of reasonable necessity is being amended as follows, new matter underlined, deleted matter interlined:

REASON: In 2019, the Montana Legislature adopted House Bill (HB) 597, which was later codified through amendments to 69-3-1201 through 69-3-1209, MCA and 69-8-421, MCA, and repeal of 69-8-419 and 69-8-420, MCA. HB 597 enacted changes to the utility long-term planning process and added requirements for competitive procurement processes for new electric resources. HB 597 articulates a clear policy of encouraging utilities to acquire resources using competitive solicitation processes. Based on the state's policy and the commission's duty to set just and reasonable rates, it is reasonably necessary to create a utility competitive solicitation process that, when used, must involve robust competition and fair and objective analysis of bids to produce lower costs and more efficient rates for consumers and ensure that procurement processes and outcomes are in service of the public interest. To implement these changes, the agency proposes several new rules that draw concepts from its existing rules found at ARM Title 38, chapter 5, subchapters 20 and 82 and update the resource planning process to reflect the Legislature's directive to the agency. These rules replace, in whole or in part, existing resource planning rules in ARM Title 38, chapter 5, subchapters 20 and 82.

NEW RULES I through VI are necessary to combine preexisting resource planning rules in ARM Title 38, chapter 5, subchapters 20 and 82 in an efficient and orderly manner and to add clarity and remove unnecessary statements from the rules.

NEW RULE I Goal and Policy

This new rule replaces the Goal and Policy rule in ARM 38.5.2001, to ensure clarity and understanding among utilities, stakeholders, and the public.

NEW RULE II Definitions

New Rule II replaces the definitions rule in ARM 38.5.2002 and adds definitions for the terms "adequate," "assessment," "cost," "cost-effective," "qualifying facility," "long-term," "affiliate," and "reliable." These terms are used in the remainder of the rules and the addition of the new definitions will ensure clear, consistent understanding among utilities, stakeholders, and the public.

NEW RULE III Plan Contents

NEW RULE III is proposed to implement requirements in 69-3-1204(1) and (2), MCA, regarding certain resource plan content and time frames for the filing of resource plans. This rule implements procedures the agency must follow to review utility plans, including publishing copies, providing for public comment, and holding public meetings as required by 69-3-1204(5), MCA, and establishes demand-side management reporting requirements required by 69-3-1209, MCA. The new rule is proposed to implement the requirements for utilities to explain, justify, and document the data, assumptions, methodologies, models, determinants, and other inputs used in preparing plans according to 69-3-1204(2)(b), MCA, and the requirement that utilities hold public meetings as they prepare plans according to 69-3-1205(1), MCA. This rule is necessary to ensure that plans utilities submit contain sufficient information to allow the commission, stakeholders, and the public to evaluate compliance with statutory objectives and the reasonableness of the utilities' planning methods, subjective judgments, and resource acquisition strategies.

NEW RULE IV Planning Process

NEW RULE IV is proposed to implement the requirement that utilities assemble and maintain a broad-based advisory committee pursuant to 69-3-1208(1), MCA, to review, evaluate, and make recommendations on matters that arise in resource planning, and to engage more broadly with stakeholders and the public. This new rule is being proposed to establish ~~guidelines~~ requirements for utility engagement with its advisory committee, stakeholders, and the public that are intended to balance transparency in the planning process with a utility's need for committee members to feel comfortable offering complete and professional input on technical, economic, and public policy issues regarding its electric system without binding any organizations that may employ committee members. This new rule establishes procedures for advisory committee feedback and participation through requirements for the work plan, including a structured process for submission of written inquiries and comments to the utility during the planning process and written responses by the utility.

NEW RULE V Resource Procurement

This rule is being proposed to implement the statutory statement of policy in 69-3-1202(1)(b), MCA, to encourage utilities to acquire resources using a transparent, independently administered competitive solicitation process and implements procedures that require utilities to file all scoring criteria and metrics for the solicitation and provide advance notice of an intent to conduct a competitive solicitation so that stakeholders and the public may provide input on that process. This proposed new rule implements guidelines to ensure that demand-side resources are fully considered in the evaluation of cost-effective means of meeting service requirements pursuant to 69-3-1204, MCA.

NEW RULE VI ~~Guidelines~~ Requirements for Competitive Solicitations

This new rule is being proposed to provide guidelines to the Consumer Counsel in requesting, selecting, and retaining an independent monitor for a competitive solicitation process as authorized by 69-3-1205(4), MCA. This new rule proposes to specify ~~guidelines~~ requirements for competitive solicitations including allowing qualifying facilities and other utilities to submit bids, use of third-party administrators in certain circumstances, the role of the advisory committee in the resource planning and acquisition process, and mandatory filing by utilities of certain information related to competitive solicitations pursuant to 69-3-1207, MCA.

The proposed ~~guidelines~~ requirements in New Rule VI are intended to promote transparency, fairness, and objectivity in utility resource ~~acquisition~~ solicitation and evaluation processes, including by specifying ~~guidelines~~ requirements when affiliate transactions could be involved, allowing opportunities for bidders to predict how their bids will be scored on both price and non-price factors, and receiving input from the utility's advisory committee on the use and selection of a third-party administrator in a competitive solicitation process. This new rule is proposing to implement the state's policy of encouraging utilities to acquire resources using competitive solicitation processes by requiring utilities to document alternative acquisition processes, including the assumptions and methods used to assess cost-effectiveness and all factors considered in, and the rationale for, the decision not to use a competitive solicitation.

4. The repeal of the above-stated rules as proposed and described in the original proposal remains the same.

5. Comments based on the original Notice of Proposed Adoption and Repeal will be considered by the commission, and do not need to be resubmitted in response to this Amended Notice of Proposed Adoption and Repeal. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Department of Public Service Regulation, 1701 Prospect Avenue, Helena, Montana, 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; or e-mail to pschelp@mt.gov; and must be received no later than 5:00 p.m., November 28, 2022.

6. The Montana Consumer Counsel, 111 North Last Chance Gulch, Suite 1B, Helena, MT 59620-1703, telephone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

/s/ Lucas Hamilton
Lucas Hamilton
Rule Reviewer

/s/ James Brown
James Brown
President
Montana Public Service Commission
Department of Public Service Regulation

Certified to the Secretary of State October 25, 2022.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.18.121 pertaining to updates of the Montana Reappraisal Plan and Classification and Valuation Manuals	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 28, 2022, at 11:00 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rule. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on November 11, 2022. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

42.18.121 PURPOSE; ADOPTION OF MONTANA REAPPRAISAL PLAN AND MANUALS; VALUATION CYCLES (1) remains the same.

(2) The department will use its computer assisted mass appraisal (CAMA) system to assist in its valuation processes and will consider the sales comparison approach, cost approach, and income approach in its determination of a property's market value. The department shall use the approach or approaches based on the type of property and the quantity and quality of data available.

(3) The department adopts and incorporates by reference the Plan, the Montana Residential, Commercial, and Industrial Property Classification and Valuation Manual, and the Montana Agricultural Land Classification and Valuation Manual, all dated January 1, ~~2021~~ 2023. The department also adopts and incorporates by reference the Montana Forest Land Classification and Valuation Manual dated January 1, 2021, and updated as of January 1, 2023. Each manual explains how the department classifies and values subject property types. A copy of the Plan and the manuals may be obtained from the Department of Revenue, Property Assessment Division, P.O. Box 8018, Helena, MT 59604-8018, and on the department's web site at https://mtrevenue.gov/publications/property-reappraisal-plan-manuals.

(4) Class four residential, commercial, and industrial property is appraised at its market value as of January 1, ~~2020~~ 2022, for the ~~2021-2022~~ 2023-2024 valuation

cycle.

(5) Class three agricultural land is appraised at its productivity value as of January 1, ~~2020~~ 2022, for the ~~2021-2022~~ 2023-2024 valuation cycle. Agricultural land values reflect productivity values in accordance with 15-7-201, MCA.

(6) and (7) remain the same.

AUTH: 15-1-201, 15-7-111, 15-7-201, MCA
IMP: 15-7-101, 15-7-103, 15-7-111, 15-7-112, 15-7-201, 15-44-103, MCA;

REASONABLE NECESSITY: The department proposes its routine, periodic amendments to ARM 42.18.121 to reflect updated versions of the Plan, Montana Residential, Commercial, and Industrial Property Classification and Valuation Manual, and the Montana Agricultural Land Classification and Valuation Manual, adopted and incorporated by reference in (3), and amend the valuation cycle dates for each property class in (4) and (5) for the upcoming cycle beginning January 1, 2023.

The department's proposed Plan and manual updates, which are available for review at the website address in (3) of the rule and are described below, generally reflect improvements in language usage, grammar, and punctuation from the current documents; update cross-references to supporting rules or statutes; and improve descriptions of the department's classification and valuation practices and processes for class three, four, and ten property. The department intends for the revisions to improve clarity of the material and the public's understanding of the subject matter.

Montana Reappraisal Plan

In addition to the above-described global amendments, the department proposes amendments to the Plan's resources section to reflect current and reopened department field offices and an internal reorganization in July 2021 where the Industrial Property Unit was transferred from the Business and Income Tax Division to the Property Assessment Division. For the public, this reorganization is significant because all class four and class eight property valuation is now completed within the same division, which is an improvement in efficiency and consistency. The department also proposes to include text defining centrally assessed property and provide how the department's Business Tax and Valuation Unit values centrally assessed property. This proposed text is intended to improve the public's familiarity with how the department values these properties.

Residential, Commercial, and Industrial Classification and Valuation Manual

In addition to the above-described global amendments, in this manual the department proposes to correct referencing to the national cost manual, Cost Data Online, used to develop base cost tables for the cost approach-to-value. Cost Data Online is not part of the RSMeans Building Construction Cost Manual as it was displayed in the current document.

The department also proposes to specify the confidentiality provision for income and expense data that is voluntarily provided by taxpayers to the department for use in the income approach to value.

The department proposes revisions to the land valuation models development section to improve clarity and understanding of the subject matter and to correct the basic multiplicative model formula in the current document.

In the cost tables - development section, the department proposes updates to the quality grade factors for the upcoming valuation cycle.

The department proposes to revise the development of capitalization rates language in the income models section to provide additional information as to how the department assigns investment classes (degree of risk) to commercial properties in the CAMA system when developing capitalization rates used in the income approach to value.

The department proposes to update text in the calculation of effective tax rate (ETR) section, as the department develops an urban and rural median ETR and not a statewide ETR.

The department proposes to amend the reconciliation and determination of final value section for residential property because the comparability distance point range is dependent upon available data when the department determines the sales comparison approach to value is credible.

In appendix A, the department proposes to amend the definition for square foot living area for clarification. Department staff measure residential property structures externally to determine above grade finished square footage.

In appendices A and B, the department proposes to update the definition for "living units" which is interchangeable with living unit, dwelling, dwelling unit, or residence and is referenced in all three manuals. The department also proposes to include an updated version of the commercial sales verification form provided in appendix E. The form was updated in September 2018 but was inadvertently omitted from the current manual.

Agricultural Land Classification and Valuation Manual

In addition to the above-described global amendments, in this manual the department proposes to amend the title page for brevity and for consistency with department branding (i.e., logos, formatting, etc.) of public-facing documents. The department also proposes to clarify which division of Montana State University-Bozeman is responsible for the determination of the minimum number of animal unit months of carrying capacity. The 2021 Legislature passed House Bill 52 which changed the reference to Montana State University-Bozeman Department of Agricultural Economics and Economics to Montana State University-Bozeman College of Agriculture.

The department proposes to update the valuation dates and commodity prices for the upcoming valuation cycle, and update the agricultural land valuation examples to improve understanding of the concepts of the different agricultural land subclassifications. In addition, a new section in the manual was added to provide an example of provisional agricultural land classification when there is an ownership transfer on the property. Prior to September 2020, the example was provided in

ARM 42.20.171. The department repealed this rule in 2020 to eliminate unnecessary redundancies to statute and had planned to include the example into the current manual. Unfortunately, this section was inadvertently omitted from the current version of the manual.

The department proposes to update the homesite section with an updated definition for "dwelling" which is used in all of the manuals, and clarify the department's classification and valuation practices for one-acre homesites.

The department lastly proposes to transfer the list of agricultural land property laws and administrative rules from the body of the manual to Appendix A. This format change will improve the manual's organization of content and will aid in the public's understanding of the subject matter.

Forest Land Classification and Valuation Manual

In addition to the above-described global amendments, in this manual the department proposes to amend the title page for brevity and for consistency with department branding (i.e., logos, formatting, etc.) of public-facing documents. In the homesite section, the department proposes to update the definition of "dwelling" which is used in all of the manuals, and clarify the department's classification and valuation practices for one-acre homesites.

The department also proposes to strike the forest land tax rate provided in the current manual and replace it with a cross-reference to 15-6-143, MCA, to give deference to the statute, which was recently amended by the 2021 Legislature, and to minimize future amendments to the manual based solely on statutory changes to the forest land tax rate.

Lastly, the department proposes to move the history section to the addendum at the request of the Forest Land Advisory Committee.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., December 5, 2022.

5. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 4 above or faxed to the office at (406) 444-3696 or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Todd Olson	/s/ David R. Stewart for
Todd Olson	Brendan Beatty
Rule Reviewer	Director of Revenue

Certified to the Secretary of State October 25, 2022.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.20.681 pertaining to agricultural commodity prices and values	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 28, 2022, at 11:30 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rule. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on November 11, 2022. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

42.20.681 AGRICULTURAL COMMODITY PRICES AND VALUES

(1) Commodity prices for the ~~2021-2022~~ 2023-2024 appraisal cycle used for the determination of income are calculated using a 10-year Olympic average of prices from Montana Agricultural Statistics for the years ~~2010-2019~~ 2012-2021. The department's Olympic average removes the highest price and the lowest price and averages the remaining eight prices. The commodity prices used for valuing agricultural land for the ~~2021-2022~~ 2023-2024 appraisal cycle are as follows:

(a) Spring wheat price used in the valuation of non-irrigated summer fallow and non-irrigated continuous cropped farm lands is ~~$6.16~~ $5.96 per bushel.

(b) Alfalfa hay price, reduced by 20 percent as required by 15-7-201, MCA, used in the valuation of irrigated and non-irrigated hay lands is $~~105.80~~ $111.30 per ton.

(c) Private grazing fees used in the valuation of grazing lands is ~~$22.49~~ $23.50 per Animal Unit Month (AUM).

(2) The minimum value of irrigated land as determined by the methodology detailed in ARM 42.20.675 is ~~$552.99~~ $535.47 per acre.

(3) The statewide grazing productivity average is ~~.21~~ .20 AUMs per acre, and is used in calculating the values of:

(a) and (b) remain the same.

(4) For the ~~2021-2022~~ 2023-2024 appraisal cycle the capitalization rate for

Class 3 agricultural land, which is used to convert an ongoing income stream into an estimate of value is 6.4 percent.

(5) For the ~~2021-2022~~ 2023-2024 appraisal cycle the highest productivity of non-irrigated continuously cropped farmland is 60 bushels per acre, and is used in calculating the values of specialty crop land.

(6) For the ~~2021-2022~~ 2023-2024 appraisal cycle, the value of the one acre beneath a residence on agricultural land is ~~$1,866~~ $2,003.

(7) For the ~~2021-2022~~ 2023-2024 appraisal cycle, the minimum carrying capacity for grazing land to be eligible for agricultural classification is ~~23~~ 25 AUMs as determined by the Montana State University - Bozeman, College of Agriculture, ~~Department of Agricultural Economics and Economics,~~ in accordance with ARM 42.20.620.

AUTH: 15-1-201, MCA
IMP: 15-6-133, 15-7-201, 15-7-202, 15-7-206, 15-7-210, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.20.681 to update the years, prices, and values for the upcoming reappraisal cycle that begins January 1, 2023. The department's use of the Montana Agricultural Statistics as its data source is required by 15-7-201, MCA.

Proposed amendments are necessary in (1)(a) through (c) to update current commodity prices and production data for the base period; in (2) to update the minimum value of irrigated land based on the new commodity price; in (3) to update state-wide grazing productivity average; in (4) and (5) to update base period references; in (6) to update the value of the one acre beneath a residence on agricultural land; and in (7) to update the minimum carrying capacity of an animal unit month (AUM) for grazing land to qualify as agricultural land for the upcoming reappraisal cycle.

Finally, the department proposes an amendment in (7) to reflect the change in name for the Montana State University - Bozeman, College of Agriculture, referenced in 15-7-202, MCA, as amended in 2021.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., December 5, 2022.

5. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject

matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 4 above or faxed to the office at (406) 444-3696 or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

10. The department intends to adopt the above-described rule amendments during the fourth quarter of 2022, with an effective date of January 1, 2023. With regard to the requirements of 2-4-305(11), MCA, this rulemaking meets one or more of the exceptions provided in (11)(b)(ii) because the commodities data that the department receives from the United States Department of Agriculture National Agricultural Statistics Service, which is used to update the commodity prices and values in the rule, is unavailable until the third calendar quarter of any year.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ David R. Stewart for
Brendan Beatty
Director of Revenue

Certified to the Secretary of State October 25, 2022.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.26.601, 42.26.602, 42.26.606 and the repeal of ARM 42.26.603, 42.26.604, and 42.26.605 pertaining to revisions to railroad income apportionment factors	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On November 28, 2022, at 10:30 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on November 11, 2022. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The department proposes to amend ARM 42.26.601, 42.26.602, and 42.26.606, which is necessary to represent the extent of this industry's business activity in the state more fairly. After meeting with industry representatives, the department agreed that the methodology set forth in the existing rules is outdated and in need of revision. Under the proposed changes, the department will apply only the receipts factor provided in ARM 42.26.606 and the numerator and denominator for railroads will be based on data that is verifiable and annually reported to the federal Surface Transportation Board and the Montana Public Service Commission. Moreover, this updated methodology (which is based on revenue ton miles) serves as a better reflection of how railroads conduct business activity in Montana. The department also proposes to repeal ARM 42.26.603, 42.26.604, and 42.26.605 because the apportionment factors listed in those rules will be obsolete with the proposed amendment to ARM 42.26.606. The department proposes that these changes become effective January 1, 2023.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

<u>42.26.601 DEFINITIONS</u> The following definitions apply to this subchapter:

(1) ~~A "car-mile" is a movement of a unit of car equipment a distance of one mile.~~ "Total revenue ton-miles occurring everywhere" means the figure a railroad includes on Schedule 755, line 110, that is associated with the Class 1 Annual Railroad Report (R-1) which it files with the federal Surface Transportation Board.

(2) ~~A "locomotive-mile" is the movement of a locomotive (a self-propelled unit of equipment designed solely for moving other equipment) a distance of one mile under its own power.~~ "Total revenue ton-miles occurring within this state" means the figure a railroad annually reports to the Montana Public Service Commission on Schedule-931, line 36.

~~(3) "Rent" does not include the per diem and mileage charges paid by the taxpayer for the temporary use of railroad cars owned or operated by another railroad.~~

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA
IMP: 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, 15-31-312, MCA

42.26.602 GENERAL RULES FOR RAILROADS (1) Where a railroad has income from sources both within and without this state, the amount of apportionable income from sources within this state shall be determined pursuant to Title 15, chapter 31, part 3, MCA, except as modified by ~~regulation~~ ARM 42.26.606.

~~(2) For definitions, rules, and examples for determining apportionable and nonapportionable income, see ARM 42.26.206.~~

~~(3) Except as modified in this regulation, the apportionment factors shall be determined as follows:~~

~~(a) the property factor in accordance with ARM 42.26.231 through 42.26.237, inclusive;~~

~~(b) the payroll factor in accordance with ARM 42.26.241 through 42.26.244, inclusive; and~~

~~(c) the receipts factor in accordance with ARM 42.26.251 through 42.26.259, inclusive.~~

(2) The requirements of this rule are effective for tax years beginning after December 31, 2022.

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA
IMP: 15-1-601, 15-31-312, MCA

42.26.606 THE RECEIPTS FACTOR (1) ~~All revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer which produces apportionable income, except per diem and mileage charges which are collected by the taxpayer, is included in the denominator of the receipts factor as provided in ARM 42.26.253. The numerator of the receipts factor is the total revenue of the taxpayer in this state during the income year. The total revenue of the taxpayer in this state during the income year, other than revenue from hauling freight, passengers, mail and express, shall be attributable to this state in accordance with ARM 42.26.254 through 42.26.259.~~ The numerator of the

receipts factor is the taxpayer's total revenue ton-miles occurring within this state during the year.

(2) ~~The total revenue of the taxpayer in this state during the income year for the numerator of the receipts factor from hauling freight, mail, and express shall be attributable to this state as follows:~~

~~(a) all receipts from shipments which both originate and terminate within this state; and~~

~~(b) that portion of the receipts from each movement or shipment passing through, into, or out of this state is determined by the ratio which the miles traveled by such movement or shipment in this state bears to the total miles traveled by such movement or shipment from point of origin to destination.~~ The denominator of the receipts factor is the taxpayer's total revenue ton-miles occurring everywhere during the year.

~~(3) The numerator of the receipts factor shall include:~~

~~(a) all receipts from the transportation of passengers (including mail and express handled in passenger service) which both originate and terminate within this state; and~~

~~(b) that portion of the receipts from the transportation of interstate passengers (including mail and express handled in passenger service) determined by the ratio which revenue passenger miles in this state bear to the total everywhere.~~

(3) The requirements of this rule are effective for tax years beginning after December 31, 2022.

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA
IMP: 15-1-601, 15-31-305, 15-31-310, 15-31-311, 15-31-312, MCA

5. The department proposes to repeal the following rules:

42.26.603 THE PROPERTY FACTOR

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA
IMP: 15-1-601, 15-31-305, 15-31-306, 15-31-307, 15-31-312, MCA

42.26.604 THE DENOMINATOR AND NUMERATOR OF THE PROPERTY FACTOR

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA
IMP: 15-1-601, 15-31-305, 15-31-306, 15-31-307, 15-31-312, MCA

42.26.605 THE PAYROLL FACTOR

AUTH: 15-1-201, 15-31-313, 15-31-501, MCA
IMP: 15-1-601, 15-31-305, 15-31-308, 15-31-309, 15-31-312, MCA

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be

submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m. December 5, 2022.

7. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 6 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

9. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State October 25, 2022.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.21.155 and 42.22.1311 pertaining to 2023 Personal Property Depreciation Schedules and Trend Tables	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 28, 2022, at 12:00 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on November 11, 2022. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. STATEMENT OF REASONABLE NECESSITY. The department proposes to amend ARM 42.21.155 and 42.22.1311 to update the authority of the web-based Personal Property Depreciation Schedules and Trend Tables publication (publication), adopted and incorporated by reference in the rules, to the 2023 version. The publication is updated annually, effective January 1, and is located within the department's website at https://mtrevenue.gov. The 2023 publication reflects changes in personal property and industrial machinery and equipment depreciation and trend factoring data in the department's valuation manuals and guides since last year. Both the 2022 publication and the proposed 2023 publication are available for review.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

42.21.155 PERSONAL PROPERTY CATEGORIES AND TRENDED DEPRECIATION METHODOLOGIES (1) through (3) remain the same.

(4) The department shall post its trended depreciation schedules for the upcoming tax year for the categories of personal property described below on the department's internet website located at http://www.mtrevenue.gov. The department adopts and incorporates by reference its ~~2022~~ 2023 Personal Property Depreciation Schedules and Trend Tables publication, effective January 1, ~~2022~~ 2023. The Depreciation Schedules and Trend Tables publication contains the detailed

schedules and tables the department uses for valuing personal property and industrial machinery and equipment. The personal property categories and trended depreciation methodologies that apply to the Depreciation Schedules and Trend Tables publication are as follows:

(a) through (h) remain the same.

AUTH: 15-1-201, 15-23-108, MCA
IMP: 15-6-135, 15-6-138, 15-6-202, 15-6-207, 15-6-213,15-6-219, 15-8-111, MCA

42.22.1311 INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS (1) remains the same.

(2) The department shall post its trend factor tables for industrial machinery and equipment for the upcoming tax year on the department's internet website located at http://www.mtrevenue.gov. The department adopts and incorporates by reference its ~~2022~~ 2023 Personal Property Depreciation Schedules and Trend Tables publication, effective January 1, ~~2022~~ 2023. The Depreciation Schedules and Trend Tables publication contains the detailed schedules and tables the department uses for valuing personal property and industrial machinery and equipment.

(3) remains the same.

AUTH: 15-1-201, MCA
IMP: 15-6-135, 15-6-138, 15-8-111, MCA

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., December 5, 2022.

6. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the publication referenced in the above-referenced rules may significantly and directly impact small businesses. While the extent of any potential impact is fact-dependent on the circumstances of each taxpayer, the department notes the following impactful changes based on the valuation resources adopted by the department:

- Personal property taxpayers are likely to see an increase in the taxable value of their property in 2023 as compared to 2022. The anticipated increase in taxable value is the result of the valuation process which first trends the acquired cost to an approximate current value before applying depreciation. The department has used the same source for trend factors for many years.
    - The 5-year average rate of increase in the trend factors for office equipment is 3.5%; the 2023 trend increased 14.12%.
    - The 10-year average rate of increase in the trend factors for miscellaneous furniture and fixtures is 2.28%; the 2023 trend increased 16.15%.
    - The 15-year average rate of increase in the trend factors for oil and gas field equipment is 2.21%; the 2023 trend increased 18.10%.
    - The 30-year average rate of increase in the trend factors for farm machinery and equipment is 2.46%; the 2023 trend increased 16.15%
    - The 30-year average rate of increase in the trend factors for heavy equipment is 2.33%; the 2023 trend increased 12.18%

11. The department intends to adopt the above-described rule amendments during the fourth quarter of 2022, with an effective date of January 1, 2023. With regard to the requirements of 2-4-305(11), MCA, this rulemaking meets one or more of the exceptions provided in (11)(b)(ii) because ARM 42.21.155 and 42.22.1311 are procedural rules that already acknowledge and disclose that the valuation data source, which the department has adopted and incorporated into the rules (e.g., Marshall & Swift Valuation Service Guide) and uses to update the publication described in number 3 above, is unavailable until the third calendar quarter of any year.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ David R. Stewart for
Brendan Beatty
Director of Revenue

Certified to the Secretary of State October 25, 2022.

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 12.6.2215 pertaining to the classification of caracal cat as a prohibited species	))))	NOTICE OF DECISION ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On June 24, 2022, the Fish and Wildlife Commission (commission) published MAR Notice No. 12-560 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 950 of the 2022 Montana Administrative Register, Issue Number 12.

2. A public hearing on the notice of proposed amendment of the above-stated rule was held on July 18, 2022.

3. Most of the comments received by the commission were opposed to listing caracal cats as a prohibited species. The commission did not adopt the proposed amendment to ARM 12.6.2215.

The commission has published MAR Notice No. 12-591 pertaining to a public hearing on the proposed amendment to ARM 12.6.2208 to classify the caracal cat as a controlled species at page 2064 of the 2022 Montana Administrative Register, Issue Number 21.

/s/ Zach Zipfel
Zach Zipfel
Rule Reviewer

/s/ Lesley Robinson
Lesley Robinson
Chair
Fish and Wildlife Commission

Certified to the Secretary of State October 25, 2022.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.95.102, 37.95.140, 37.95.160, 37.95.184, 37.95.622, 37.95.703, 37.95.704, and 37.95.1130 pertaining to immunization requirements and exemptions for children and staff at child care facilities	))))))))	NOTICE OF DECISION ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 5, 2022, the Department of Public Health and Human Services published MAR Notice No. 37-994 pertaining to the proposed amendment of the above-stated rules at page 1495 of the 2022 Montana Administrative Register, Issue Number 15.

2. A public hearing on the notice of proposed amendment of the above-stated rules was held on August 25, 2022.

3. The Department of Public Health and Human Services remains committed to a holistic revision of all rules related to the regulation of child care facilities in Montana. To that end, the department withdraws MAR Notice No. 37-994 contemporaneously with the publication of MAR Notice No. 37-1020, the latter of which is a comprehensive regulatory amendment and restructuring of child care rules.

/s/ HEIDI SANDERS
Heidi Sanders
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State October 25, 2022.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEES

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee

- Department of Agriculture
- Department of Commerce
- Department of Labor and Industry
- Department of Livestock
- Office of the State Auditor (Commissioner of Securities and Insurance)
- Office of Economic Development
- Division of Banking and Financial Institutions
- Alcoholic Beverage Control Division
- Cannabis Control Division

Education Interim Committee

- State Board of Education
- Board of Public Education
- Board of Regents of Higher Education
- Office of Public Instruction
- Montana Historical Society
- Montana State Library

Children, Families, Health, and Human Services Interim Committee

- Department of Public Health and Human Services

Law and Justice Interim Committee

- Department of Corrections
- Department of Justice

Energy and Telecommunications Interim Committee

- Department of Public Service Regulation.

Revenue Interim Committee

- Department of Revenue
- Montana Tax Appeal Board

State Administration and Veterans' Affairs Interim Committee

- Department of Administration
- Montana Public Employee Retirement Administration
- Board of Investments
- Department of Military Affairs
- Office of the Secretary of State
- Office of the Commissioner of Political Practices

Transportation Interim Committee

- Department of Transportation
- Motor Vehicle Division (Department of Justice)

Environmental Quality Council

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

Water Policy Interim Committee (where the primary concern is the quality or quantity of water)

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2022. This table includes notices in which those rules adopted during the period May 13, 2022, through October 21, 2022, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2022, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2022 Montana Administrative Register.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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